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Friday, 12 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI and UMEZU who are
5 represented by counsel. The Prison Surgeon at
6 Sugamo certifies that they are ill and unable to
7 attend the trial today. The certificates will be
8 recorded and filed.

9 With the Tribunal's permission, the accused
10 KAYA will be absent from the courtroom the entire
11 day conferring with his counsel.

12 Mr. Lazarus.

13 MR. LAZARUS: If the Tribunal please, the
14 middle of page 138.

15 THE PRESIDENT: Some of these quotations are
16 very extensive, Mr. Lazarus. We may yet have to
17 decide to pass over these without reading them, simply
18 directing that they be copied into the transcript.

19 MR. LAZARUS: As you pointed out yourself,
20 Mr. President, by paraphrasing, sometimes an incor-
21 rect interpretation on the evidence is placed; whereas,
22 by quoting the evidence and then merely commenting in
23 one sentence, we save time, we think, and really
24 assist the Tribunal.

25 THE PRESIDENT: I did not suggest paraphrasing.

1 I suggested the quotations should not be as long as
2 they are. However, proceed to read.

3 MR. LAZARUS: Thank you.

4 On this point, General TANAKA testified as
5 follows: (p. 29,043):

6 "When the decision was announced that the
7 fliers would be tried by the newly promulgated mili-
8 tary law, I protested the decision to General TANABE,
9 Vice-Chief of the General Staff, and stated to him
10 that in my opinion the fliers should be treated as
11 prisoners of war. General TANABE stated that he
12 agreed with me and not only was that so, but that he
13 had just received a letter from General USHIROGU,
14 General HATA's Chief of Staff, stating that General
15 HATA was of the opinion himself, that he, HATA, de-
16 sired to treat the fliers as prisoners of war. Gen-
17 eral TANABE then stated that nothing could be done
18 about the matter because the General Staff had al-
19 ready made the decision that the fliers must be tried
20 by military law."

21
22 And (p. 29,044):

23 "As a result of the receipt of this letter
24 from General USHIROGU stating the position of General
25 HATA with reference to the fliers, Colonel ARISUE was
dispatched from Tokyo by the General Staff to HATA to

1 give HATA the orders and the desires of the General
2 Staff. The General Staff in Tokyo was afraid that
3 HATA would not carry out the instructions of putting
4 the fliers to trial and Colonel ARISUE was sent to
5 HATA to notify HATA that he was to go as he was
6 ordered and that no theory or logic on his part with
7 reference to this case would be accepted by Tokyo.
8
9 Moreover, there was another apprehension among the
10 members of the General Staff, that even if the China
11 Expeditionary Force tried these fliers, they might
12 have found a decision of not guilty and that HATA
13 would then have released them after trial and this the
14 General Staff feared.

15 "Thus, as the matter stood, all orders and
16 directives with reference to the trial were issued by
17 the General Staff in Tokyo and the trial was held by
18 the 13th Army in China. Hence, in this trial, General
19 Headquarters of the China Expeditionary Army merely
20 acted as a channel through which were transmitted the
21 orders of the General Staff in Tokyo to the 13th Army
22 where the trial was being held. There was absolutely
23 no room left whatsoever for the use of any discretion
24 or judgment on the part of the members of the Head-
25 quarters of the China Expeditionary Force with refer-
ence to this trial."

1 Returning to Mr. Sutton's cross-examination
2 of MIYANO we have the following: (p. 28,395)

3 "Q Did General HATA order the 13th Army to set
4 up a military tribunal to try these fliers?

5 "A There was no such piecemeal orders. The
6 general instructions issued by General HATA to the
7 13th Army was in connection with the prospective
8 trial of the Doolittle fliers before a military
9 court. The 13th Army was first to investigate into
10 the conditions and circumstances to find out whether
11 or not a military court trial -- the conditions would
12 warrant a military trial of these fliers, and other
13 necessary matters.

14 "General HATA furthermore issued a general
15 order to the 13th Army to the effect that they must
16 not conduct -- establish or conduct a military trial
17 of these fliers pending orders from the Commander in
18 Chief of the China Expeditionary Force. Meanwhile,
19 he communicated to Tokyo to the effect that he was
20 opposed to conducting a military trial of these fliers.

21 "Q When did he communicate to Tokyo?

22 "A As I have said before, toward the end of
23 July."

24 Continuing with Mr. Sutton's cross-examination
25 of MIYANO, we learn (p. 28,399):-

1 "Q Was any counsel provided for the fliers at
2 that trial?

3 "A No counsel was provided in accordance with
4 the provisions establishing the military court. May
5 I add that it is Japanese military regulations that
6 it is Japanese military regulations that neither
7 General HATA nor Lieutenant General SAWADA could make
8 any modifications or changes providing for a counsel
9 for the defense for the fliers."

10 Next, we learn (28,901):

11 "Q Did General HATA receive a report of this
12 trial?

13 "A Yes.

14 "Q Did the report show the circumstances surround-
15 ing the trial and conviction of these eight fliers?

16 "A Yes, it does; but no reports were made to
17 the Commander in Chief of the China Expeditionary
18 Forces as to the manner in which the trial was con-
19 ducted.

20 "Q What did the reports show?

21 "A The judgment and the reason for the judgment.

22 "Q What reasons were given for the judgment?

23 "A In the reasons -- among the reasons it was
24 stated that these fliers, both in Tokyo and Nagoya,
25 machine-gunned primary school children and bombed

1 civilian homes which could be very clearly disting-
2 uished from military objects."

3 Continuing (28,902):-

4 "Q Why was the report sent to General HATA?

5 "A Reports to be sent to Tokyo were channeled
6 through General HATA's headquarters."

7 Continuing the cross-examination by Mr.
8 Sutton (28,903):

9 "Q Did General HATA, at any time, after the
10 trial, suggest any special circumstances or mitigation
11 of punishment?

12 "A Inasmuch as General HATA had already communi-
13 cated his position on the matter, that is to say, his
14 objections to the trial, to the central military
15 authorities; and inasmuch as he was on very intimate
16 terms with the Chief of the Army General Staff, having
17 graduated from the military academy in the same year,
18 and inasmuch as General HATA placed his confidence in
19 the views he had already set forth to the central
20 military authorities, and because he had other reasons,
21 he felt that there was no need to write another recom-
22 mendation in order to realize what he had wanted to
23 realize, and therefore found no need to go into fur-
24 ther investigations to find reasons for making further
25 recommendations to the central military authorities."

1 This, then answers Mr. Tavenner's question,
2 previously quoted, on HATA's failure to make another
3 recommendation in behalf of the fliers after he had
4 already tried unsuccessfully to stop their trial as
5 war criminals.

6 And finally we turn to the last defense wit-
7 ness on the Doolittle trial, General TANAKA, Ryukichi
8 (29,041):-

9 "At the time of the raid on Tokyo by the
10 American fliers in April of 1942, I was Chief of the
11 Military Service Section of the War Ministry. Because
12 during the raid school children had been shot and
13 non-military areas had been bombed there were different
14 opinions as to the treatment to be given fliers who
15 became prisoners. The General Staff in Tokyo decided
16 that all decisions as to the trial and treatment of the
17 captured fliers should be exclusively within the prov-
18 ince of the General Staff itself. Hence, as soon as
19 the fliers were captured in China the General Staff
20 ordered their immediate delivery to Tokyo. All rela-
21 tive investigations were made in Tokyo and preparations
22 were made to hold the trial of the fliers in Tokyo.
23 However, as to the treatment to be given the fliers
24 there developed two different opinions. One opinion
25 was supported by the General Staff and the other by

1 the War Ministry. Because of these conflicting opin-
2 ions the General Staff suddenly gave up its intention
3 to hold the trial in Tokyo and ordered that the trial
4 be held in China and an order to that effect was for-
5 warded to the China Expeditionary Army Headquarters
6 and the fliers themselves were sent to Shanghai.

7 "In those days there weren't any regulations
8 that fliers could be tried by a military court and so
9 in Tokyo a new military law as to the treatment of
10 fliers who raided the Japanese homeland and the area
11 under its control was promulgated and a copy of the
12 new order was forwarded to the China Expeditionary
13 Force with orders that the same law would be in ef-
14 fect in the areas controlled by the Japanese armies in
15 China also. In the same order containing the informa-
16 tion about the new military law just promulgated, was
17 contained an order to Headquarters of the Japanese
18 Expeditionary Army in China that the fliers would be
19 tried under this law in China. Because there was no
20 military court set up in the Headquarters of the China
21 Expeditionary Forces at Nanking, the trial was to be
22 held by the 13th Army at its headquarters in Shanghai."

23 Mr. Keenan cross-examined TANAKA as follows
24 (p. 29,055):-
25

"Q Were they sent back to China before the law

was promulgated or afterwards?

1 "A If my recollection serves me right, the law
2 was promulgated toward the end of July whereas the
3 fliers were sent to China on the 18th of June. The
4 draft plan of the military law, of course, had been
5 drawn up long before, but because of violent opposi-
6 tion, the promulgation, the actual promulgation of
7 the law, had been delayed."

8
9 The President of the Tribunal questioned
10 TANAKA as follows (p. 29,057):-

11 "The President: A colleague desires further
12 particulars about those two orders to hold a trial and
13 punish severely. Did the second order come before the
14 trial was concluded?

15 "The Witness: The order came before the
16 trial was even started. This order was communicated
17 verbally through Colonel ARISUYE.

18 "The President: To whom was the order
19 directed?

20 "The Witness: The Chief of the General Staff
21 personally sent Colonel ARISUYE as his emissary to
22 General HATA, Commander of the forces in China, and
23 communicated this order."
24

25 With all this, then, the cross-examination
of SAWADA, the examination and cross-examination of

1 MIYASE and TANAKA, it is conclusively clear that HATA
2 was not the originating or initiating authority in
3 this trial. Everything about this trial, from be-
4 ginning to end, was handled by Tokyo, including the
5 promulgation of the law in Tokyo, 28 July, and which
6 was published in China 13 August (exhibit 1992 and
7 1991), the order to try the fliers (exhibit 1993,
8 28 July), the review of the decision, the commutation
9 of sentence for some, and the order to carry out the
10 execution for the others. HATA never appointed the
11 court, or had authority to review or revise the sen-
12 tence. At all times, HATA was only in the chain of
13 command because of his position in China through
14 whose headquarters orders to the 13th Army from Tokyo
15 had to be channeled.

16 Now let us turn our attention to the prose-
17 cution's rebuttal evidence. In an attempt to rebut
18 the evidence offered by defense witnesses, the prose-
19 cution introduced in rebuttal an interrogation of
20 YONAI by a USSR officer dated May 15, 1946. During
21 cross-examination, Admiral YONAI had denied that he
22 had made some of the answers contained in the interro-
23 gation. Even the most favorable parts of this excerpt,
24 from the prosecution's point of view, contain evidence
25 to support the testimony introduced by the defense

1 that HATA was forced by the General Staff to resign
2 as War Minister in the YONAI Cabinet. For instance
3 (33,000):

4 "Q What were the reasons for the resignation of
5 Minister of War in your cabinet?

6 "A The reason for resignation of Minister of
7 War was that my cabinet was by the composition a weak
8 one, and the Minister of War, being in the cabinet,
9 was unable to exercise the control over Army."

10 The last question and answer in the first
11 portion of this excerpt from the interrogation are
12 as follows: (p. 38,001)

13 "Q What point of view concerning the conclusion
14 of a military alliance between Japan and Germany did
15 HATA, Shunroku support?

16 "A HATA, Shunroku thought that the conclusion
17 of a treaty between Japan and Germany at that time
18 would be advantageous to Japan."

19 YONAI denied emphatically on cross-examination
20 that he had given such an answer (p. 28,921).

21 And now, here, if the Tribunal please, we
22 have quoted the balance of this exhibit for identifi-
23 cation, and the prosecution's objection was sustained
24 by the Tribunal to our quoting any such type of evi-
25 dence which we felt was in answer to the prosecution's

1 excerpt. Therefore, we will omit that page, unless
2 the Tribunal should feel it proper to be read.

3 THE PRESIDENT: The summation must be con-
4 fined, Mr. Lazarus, to evidence that has been ad-
5 mitted.

6 MR. LAZARUS: Then, if the Tribunal please,
7 page 148 also contains additional quotations from
8 that same prosecution excerpt, and we will skip that
9 page and page 149, if the Tribunal please. We, there-
10 fore, will resume at the top of page 150:

11 Next the prosecution introduced two excerpts
12 from the record of the budget committee of the 75th
13 Diet, 22 March, 1940, and 7 February 1940 (exhibit
14 3832, p. 38,015, exhibit 3833, p. 33,025). This is
15 the only time that HATA has made any statement that
16 has been officially quoted and presented to this Tri-
17 bunal. And here again in these prosecution exhibits
18 we find support for our evidence that HATA was not
19 pre-Tripartite Pact and always supported strongly the
20 YONAI Cabinet. HATA is quoted as follows: (p. 33,022)

21 "You referred to our following England and
22 America or otherwise Germany and Italy, and although
23 I have some opinion on the prospect of the European
24 War from my specialistic viewpoint, I refrain from
25 discussing it now."

1 If HATA had been pro-Tripartite Pact, here
2 was his opportunity to say so, when he had been ques-
3 tioned by a Diet member on foreign policy. Proving
4 that he was against tying Japan in with any foreign
5 group or bloc, he immediately continues:

6 "In short, there are various blocs, such as
7 Anglo-American bloc, or German-Italian bloc, but as
8 far as us, in order to settle the incident, there will
9 be no change in our policy which is to concentrate
10 all our ability to exclude any third power which would
11 persistently interfere with the establishment of the
12 new order in East Asia."

13 Here is a clear statement of support for
14 YONAI Cabinet policy which has been praised by Keenan
15 and Tavenner as anti-Tripartite Pact, for HATA says
16 "there will be no change in our policy" which was
17 "to exclude any third power."

18 THE PRESIDENT: You must refer to counsel in
19 respectful terms. You mean Mr. Keenan and Mr. Taven-
20 ner.

21 MR. LAZARUS: Yes, Mr. President. I always
22 have "Mr." except there;

23 THE PRESIDENT: It is not like you to use
24 that phraseology, Mr. Lazarus.

25 MR. LAZARUS: If the Tribunal please, I always

1 had "Mr." before.

2 This surely lays at rest any prosecution con-
3 tention that HATA opposed the YONAI Cabinet policy.
4 And, finally, Mr. Sutton read from the second of
5 the two above-named exhibits only this part and we
6 quote it as the final, clinching evidence that HATA
7 did always support the YONAI Cabinet and its policy
8 (p. 38,025):

9 "State Minister HATA: This question is very
10 important and naturally, I am of the opinion that we
11 should follow the government's policy."

12 And so, we respectfully submit, the last nail
13 is driven into the coffin of the prosecution's allega-
14 tion that HATA opposed the YONAI Government or its
15 policy, and it is very fitting, we think, that this
16 last nail should be driven in with the prosecution's
17 own rebuttal evidence.

18 Continuing his rebuttal evidence, Mr. Sutton
19 next introduced in evidence the record of the trial
20 "United States of America vs. Shigeru SAWADA et al"
21 (exhibit 3834 for identification, page 38,030). His
22 first excerpt therefrom was the very lengthy testimony
23 of two surviving American Doolittle fliers on their
24 mistreatment and torture in China and in Tokyo before
25 their trial. At no time during the case of General

1 HATA had we introduced any evidence with reference
2 to any atrocities. But the prosecution introduced
3 this excerpt and tried to lay the blame for these
4 atrocities at the feet of General HATA. Let us see
5 who did know about the mistreatment of the fliers and
6 was in a position to stop it.

7 Here again, if the Tribunal please, we have
8 quoted from the same prosecution exhibit which had
9 not been offered in evidence, and we will strike it
10 at the request of the Tribunal. We will resume on
11 page 153 at the bottom:

12 And, the Tribunal will remember that earlier
13 in this summation we quoted SAWADA's statements before
14 this Tribunal that the very first time that he consulted
15 with HATA about the fliers was one month after the
16 completion of their trial. HATA in no way was re-
17 sponsible for what SAWADA was doing to these boys while
18 they were under SAWADA's control.

19 And the last piece of rebuttal evidence offered
20 by the prosecution was the testimony of MIYANO at the
21 SAWADA trial (38,059). This was to rebut the testi-
22 mony of MIYANO. In substance, this rebuttal testimony
23 is to the effect that HATA had requested the death sen-
24 tence. MIYANO stated before this Tribunal after Mr.
25 Sutton had read this testimony to him (28,905):

1 "In the document that was just read to me,
2 there were words to the effect that a demand was made
3 for the execution of the sentence, or something to
4 that effect, but no such demand was actually made.

5 "With regard to the request made, the so-
6 called request made by General HATA to the prosecu-
7 tor to demand the death penalty, my statement, the
8 statement I actually made was that such a demand was
9 supposed to have been made. I said at that trial
10 that since an order had come from the Chief of the
11 Army General Staff, that order was supposed to have
12 been delivered, but at the trial in Shanghai, SAWADA
13 said that he had not heard of that before. Neither
14 did any of his co-defendants say that they heard it
15 before. The fact is they had not heard of it before,
16 and so I will have to revise my recollection on this
17 matter, and say that I do not know."

18 Continuing his cross-examination (28,907),
19 Mr. Sutton quoted and then asked as follows:

20 "Q Did you mean by your previous answer that
21 HATA requested the 13th Army prosecutor to ask for
22 the death penalty?
23

24 "A He requested so."

25 Later we have this (28,914):

"A I deny the fact -- the portion that runs to

1 the effect that General HATA has asked the prosecutor
2 to ask for the death sentence. I do not -- since I
3 did not know the facts, I replied that such a request
4 was supposed to have been made."

5 The excerpt from the trial itself is the
6 best evidence of how this mix-up arose (38,059):

7 "Q Was the trial of the Doolittle fliers ordered
8 by General HATA to be tried at Shanghai?

9 "A Yes.

10 "Q Do you mean by your previous answer that
11 HATA requested the 13th Army prosecutor to ask for
12 the death penalty?"

13 Now here, if the Tribunal please, is the be-
14 ginning of the difficulty in interpretation. For how
15 could an examiner draw such a conclusion as he did
16 on his second question as a request for a death pen-
17 alty from a simple answer of "yes" to a question as
18 to whether HATA had ordered the trial? Then this
19 immediately follows the second question:

20 "A He requested so. (To interpreter): Will you
21 interpret that again?

22 "Interpreter: He said he requested so --
23 requested that the sentence be executed; he requested
24 so."
25

Here the interpreter, without again asking

1 MIYANO, gives a second interpretation of what MIYANO
2 said. This time a request for the execution of sen-
3 tence, even though neither of the two previous ques-
4 tions in any way calls for such an answer. The ex-
5 cerpt continues immediately:

6 "Q Does he mean the General requested so?

7 "A Yes, HATA.

8 "Q Did General HATA request the prosecutor of
9 the 13th Army to ask for the death sentence?

10 "A He requested the death sentence."

11 The interpretation, obviously, is so poor
12 with non-responsive answers being interpreted, that we
13 have to look to the rest of the evidence to see whether
14 or not HATA had indeed made such a request. MIYANO
15 as heretofore quoted stated before this Tribunal that
16 such a demand was "supposed to have been made" and
17 (23,911) "that since an order had come from the Chief
18 of the Army General Staff, that order was supposed to
19 have been delivered." But that at the SAWADA trial in
20 Shanghai, he, SAWADA, said that "he had not heard of
21 that before. Neither did any of his co-defendants say
22 that they had heard it before."

23
24 In sur-rebuttal we sought to answer this
25 excerpt offered by the prosecution by introducing
other excerpts from the SAWADA trial to show that just

1 as MIYANO had told this Tribunal, none of the defend-
2 ants in the SAWADA trial had heard it before.

3 Then, if the Tribunal please, although we
4 do not quote, we say that the trial revealed that no
5 one had stated that HATA had made the request, and it
6 has been suggested that it would be improper to make
7 such an observation.

8 THE PRESIDENT: You are not at liberty to
9 refer in that way to something not in evidence.
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1 MR. LAZARUS: We will begin, therefore, with
2 "They all testified that the death sentence request
3 had, instead, come from Tokyo and had been made, not
4 by HATA, Shunroku, but by Major HATA, Itsuro, the
5 prosecutor at the Doolittle trial."

6 Then we skip the next few sentences.

7 THE PRESIDENT: Who are "they"? Those who
8 testified in the former trial? That should come out,
9 too.

10 MR. LAZARUS: I have got an exhibit there,
11 Mr. President.

12 THE PRESIDENT: Well, you can put in anything
13 that is in the exhibit certainly.

14 MR. LAZARUS: The expression "they all testi-
15 fied," that may come out, but the rest is definitely
16 based on that exhibit: "The death sentence request
17 had, instead, come from Tokyo and had been made, not
18 by HATA, Shunroku, but by Major HATA, Itsuro, the
19 prosecutor at the Doolittle trial," and that is in
20 evidence.

21 Then we skip the next sentence and begin with:

22 And we again respectfully refer the Tribunal
23 to SAWADA's statement that he never spoke to HATA about
24 the Doolittle trial till one month after the trial was
25 over and -- skip the first three lines there and the

1 first word on the fourth line -- there is not one
2 mention or a suggestion anywhere that anyone consulted
3 with General HATA, Shunroku, until after the trial was
4 all over. And the most convincing argument we can ad-
5 vance on this point, if the Tribunal please, is the
6 fact that if any such consultation had taken place,
7 the prosecution would most certainly have introduced
8 that evidence. They have introduced no such evidence.

9 And the final and most conclusive evidence
10 that HATA had no responsibility for the Doolittle trial
11 is found in the excerpt of the SAWADA trial record
12 that the Tribunal did accept over the prosecution's ob-
13 jections (Ex. 3867, p. 38,616):

14 "8 Oct. 1942

15 "On this day, orders were issued for
16 the change in command of the 13th Army.
17 Lt. Gen. SAWADA was in Shanghai at the time,
18 while Lt. Gen. SHIMOMURA, Commandant of the
19 Army General Staff College up to this date,
20 was in Saitama province, engaged in maneuvers
21 which had been going on since 1 Oct. However,
22 He was immediately recalled to Tokyo and as-
23 signed as army commander.

24 "9 Oct. 1942

25 "Lt. Gen. SHIMOMURA makes courtesy call

to Imperial Headquarters.

1 "Up to this day (9 Oct.) Lt. Gen. SHIMOMURA
2 had absolutely no connection with this incident.
3 Therefore, he asked for a more detailed explana-
4 tion and was given the following answer by the
5 Chief of the General Staff:

6 "'This affair has been thoroughly
7 investigated and the final decision has been
8 made in Tokyo. As a result, there is nothing
9 that Shanghai or Nanking can do about this
10 decision except carry it out. As to the
11 details and procedures of the trial, you can
12 get a report from the one responsible at the
13 time, when you reach Shanghai."

14 The last word is all-important. It isn't
15 Nanking, HATA's Headquarters, but Shanghai, 13th Army
16 Headquarters. And "there is nothing Shanghai or Nan-
17 king can do about it, except carry it out." We rest
18 with that.
19

20 Lastly, we turn our attention to the prosecu-
21 tion summation. Just as we have feared, based on past
22 experience before this Tribunal, the summation is a
23 desperate attempt to make out a case against the ac-
24 cused HATA by bringing in the most far-fetched evi-
25 dence which has no connection with him. The summation

is replete with contradictions to the prosecution's general summation and to the prosecution's summations against other individual accused.

The summation against HATA contains misinterpretations of evidence in the record, based on fractions of sentences lifted from the record. We know, from the very nature of the prosecution's case against HATA, built as it is on hearsay, innuendoes, and conclusions and inferences drawn from evidence introduced against other accused before this Tribunal, that the prosecution would, in its summation, have to resort to such tactics. Therefore, we set out at length, the full and complete testimony and evidence about HATA so that the Tribunal could render its decision on all the evidence, and not on mere fractions of sentences. Because of the fullness of our exposition of all the evidence as heretofore made, we have found on receipt of the prosecution's summation against HATA, that there is very little left for us to answer. We will take note only of the more glaring examples of misinformation contained in this summation and rely completely on the full exposition of the evidence already set out hereinbefore.

Mr. Sutton tells us that HATA's first period of waging war in China falls into two divisions: First.

1 as Military Councillor and Inspector-General of
2 Military Education from August 1937 to February 1938,
3 and secondly, as Commander of the Central China Ex-
4 peditionary Forces from February 1938 to December
5 1938.

6 Throughout his entire summation, Mr. Sutton
7 takes an abnormal interest in the post of Military
8 Councillor. While he refers to it on three occasions
9 and tries to make the position appear to be one of
10 power, he never once offers a single citation, it will
11 be noted, to show what the position of Military Council-
12 lor is and what functions, if any HATA performed
13 while he held that position. He does not tell the
14 Tribunal that the post of Military Councillor is an
15 interim post given to the highest-ranking Japanese
16 officers while they are being transferred from one
17 post to another, or while they have no position of
18 command at the moment and are awaiting appointment to
19 their next post or station.

20 Let us examine the identical exhibit which
21 Mr. Sutton cites for his authority that HATA held
22 this position three times (exhibit 106, p. 701). We
23 see (p. 702) under 2 August 1937, while HATA was
24 Commander of the Formosan Army, and before he was
25 appointed Inspector-General of Military Education:

1 "Released from the above post and appointed Military
2 Councillor." Under date of 15 December 1938 when he
3 was released as Commander of the Expeditionary Forces
4 in China, and before he was appointed Chief Aide-de-
5 Camp to the Emperor, we find: "Released from the
6 above post and appointed Military Councillor." And,
7 after his resignation as War Minister in the YONAI
8 Cabinet and before his appointment as Commander in
9 Chief of the Expeditionary Forces in China, we find,
10 under date 22 July 1940: "Released from the additional
11 and regular posts by request and appointed Military
12 Councillor."

13 With this as a background, then, we proceed
14 to analyze Mr. Sutton's summation on this point
15 (p. DD 4). Speaking of HATA's first appointment as
16 Military Councillor on 2 August 1937, and before he
17 became Inspector-General of Military Education, Mr.
18 Sutton says: "It was then his duty and responsibility
19 to advise the Cabinet on military matters." There is
20 no citation to show where Mr. Sutton had the idea
21 that it was the Military Councillor's duty to advise
22 the Cabinet, and, more important still, there is no
23 citation to show that any advice was given on any
24 action taken by HATA while he held this interim post.
25 This will be true throughout all such statements by

1 Mr. Sutton. He never gives a single citation on the
2 post of Military Councillor, though he tries to make
3 capital of it.

4 The post of Military Councillor may be held
5 concurrently with another post if the high-ranking
6 Japanese officer is to hold the second post but a
7 short time. HATA held the post of Inspector-General
8 of Military Education less than six months before
9 he was sent to China.

10 Mr. Sutton next tells us that HATA moved
11 (DD 5) "from the position of Military Councillor
12 where he advised concerning military operations. . .",
13 but he again mysteriously fails to give a single
14 citation to show any advice given on military oper-
15 ations. Speaking of the post of Inspector-General
16 of Military Education, he says: "As a member of the
17 Big Three, controlled the appointment of War Minister,
18 and had it in his power to make and destroy cabinets..."
19 Here we must point out again that the prosecution
20 does not tell the Tribunal that HATA did not control
21 the appointment of a War Minister, simply because no
22 new War Minister was appointed during this period.

23 Mr. Sutton's second point with reference to
24 this period in HATA's career is that HATA waged war
25 as a General in China. We have already dealt

1 sufficiently with that point in the beginning of
2 our summation. Our position remains that an officer
3 who fights for his country after it has embarked on
4 a war in whose planning and initiation he had no part,
5 is not waging war. After having gone through HATA's
6 period as Commanding General in China, and speaking
7 of his being relieved of that post on 15 December
8 1938, Mr. Sutton states (DD 8): "And on the same
9 day was brought again into the inner circles of govern-
10 ment as Military Councillor." Again no citation as
11 to what this post is and what HATA did while holding
12 it. Mr. Sutton nevertheless calls it "the inner
13 circles of government."

14 Next, the summation takes up Hankow and the
15 testimony of Dorrance, the prosecution's only witness
16 on the alleged atrocities committed there. It men-
17 tions that Dorrance testified about dead "Chinese men
18 dressed in Chinese gowns with their hands wired behind
19 them," but it does not tell the Court that Dorrance
20 said (p. 3396): "On the street corners. . . oh, I
21 saw probably six or seven on different corners. . .",
22 and, further, he does not tell the Tribunal who had
23 shot these people. There is no evidence whatever that
24 these six or seven dead had been shot by Japanese.
25 It could have been done by Communists, it could have

1 been done by bandits, it could have been done by
2 anyone. Dorrance did not undertake to say who had
3 done it.

4 HATA, if the Tribunal please, had been ex-
5 amined in Sugamo only once, before this trial. That
6 examination was introduced as exhibit 256 (p. 3,451)
7 and the exhibit shows that it was taken by Colonel
8 Morrow, the same prosecutor who introduced and ex-
9 amined the witness Dorrance before this Tribunal.
10 The exhibit reveals Colonel Morrow had examined HATA
11 on the Hankow campaign, but never once asked a single
12 question of HATA about atrocities or even mentioned
13 that subject with reference to Hankow. And the pros-
14 ecution's evidence, by a very inadequate witness at
15 that, shows that the prosecution was right in not
16 quizzing HATA on atrocities. There just weren't any
17 atrocities at Hankow.

18 In closing the Hankow matter, we quote from
19 the prosecution's general summation (p. J-32): "There
20 is no evidence of the atrocities at Hankow having
21 been brought to the notice of the Japanese govern-
22 ment....." We refer the Tribunal to our complete
23 exposition of all the evidence on Hankow earlier in
24 this summation.
25

Mr. Sutton next tries to make out an opium

1 and narcotics case against HATA although, in the
2 entire prosecution case he cannot point to a single
3 citation where the name of HATA was connected with
4 opium. That opium has been sold in China we do not
5 dispute. China's age-old sorrow even brought on the
6 opium wars with England and France in the middle
7 nineteenth century. In this instance, Mr. Sutton steps
8 in where Mr. Carr did not tread, for Mr. Carr, in
9 answer to our motion for dismissal, very properly
10 never even suggested that HATA was connected with
11 the opium trade. So desperate is Mr. Sutton because
12 of the lack of evidence to prove any connection be-
13 tween HATA and opium, that he quote the denial by a
14 defense witness of HATA's connection with opium and then
15 says it is difficult to understand. Here again we
16 must point out to the Tribunal that when HATA was
17 examined in Suifu on his activities as Commander in
18 China, not one word was mentioned about opium by the
19 interrogators.

20
21 Mr. Sutton continues his preoccupation with
22 reference to the post of Military Councillor. He
23 tells us (DD 12): "It is reasonable to infer that
24 those closest to the new order in East Asia would
25 seek the advice of the one who had so successfully
carried their banner through China. On 15 December

1 1938 HATA was appointed as Military Councillor in
2 the First KONOYE Cabinet and exactly one week later
3 on 22 December 1938 Premier KONOYE issued a state-
4 ment...." on Japan's policy in China. Mr. Sutton
5 tries to infer that HATA must have advised this as
6 Military Councillor, but we look again and again in
7 vain for any citation showing HATA's connection or
8 the functions of a Military Councillor. As we have
9 already quoted from HATA's record, HATA became
10 Military Councillor upon being relieved as Commander
11 in China and remained in that post until he became
12 Aide-de-Camp to the Emperor.

We next learn (D.D. 13) with reference to
1 HATA's appointment as War Minister in the ABE Cabinet:
2 "The fact that he had served as Aide-de-Camp and would
3 be acceptable to the Emperor, gave to the conspirators
4 an opportunity to hold at least one of their inner
5 group in the ABE Cabinet. . . ." We have already gone
6 thoroughly into HATA's appointment to the ABE Cabinet
7 and quoted at length Mr. Keenan's cross-examination
8 of KIDO on this point, in which the Chief Prosecutor
9 held up HATA's appointment as a personal act of the
10 Emperor in opposition to the militarists' recommenda-
11 tion of another man unacceptable to the Emperor. Mr.
12 Sutton should read what his superior says in this
13 court and try not to contradict him in his summation.
14

15 The summation next takes up HATA's appointment
16 of MUTO (D.D. 15), and here we see how evidence is
17 misinterpreted when a mere reference is made to two or
18 three words only from an entire testimony, which testi-
19 mony is in direct opposition to the interpretation given
20 it by Mr. Sutton. Mr. Sutton says: "TANAKA quoted
21 HATA as having stated that MUTO influenced his resig-
22 nation as War Minister. There may be question as to
23 the extent to which HATA's appointee and subordinate
24 in the War Ministry, MUTO, could have encouraged HATA
25 in his decision to destroy the YOKAI Cabinet, but this

1 does show the close and intimate relationship between
2 these two co-conspirators." Now, let us look at the
3 record, on the same page cited by Mr. Sutton for this
4 conclusion of his, TANAKA, testifying as a prosecution
5 witness states: "Shortly after I became Chief of the
6 Military Service Bureau in 1940, I had an occasion
7 to take dinner with General HATA in Tsukiji, Tokyo,
8 and at that time I asked General HATA why he took such
9 an attitude which was really against his ideas and his
10 nature and he said he was obliged to do so by the in-
11 fluence of MUTO." And on the next page: "Had War
12 Minister TOJO not accepted the views of the Military
13 Affairs Bureau, he would have met the same fate as War
14 Minister HATA."

16 We fail to see how this testimony can "show the
17 close and intimate relationship" between HATA and MUTO.
18 And Mr. Sutton again harps on the fact that HATA was
19 not "necessarily required to follow the suggestion"
20 made by INUMA when he recommended MUTO to HATA in the
21 approved Japanese army procedure in his capacity as
22 Chief of the Personnel Affairs Bureau (D.D.16). But
23 again, as before, nowhere does Mr. Sutton suggest
24 anything else that HATA should have done, nor does he
25 suggest that MUTO had done anything up to this time
to give notice to HATA that he, HATA, shouldn't accept

INUMA's recommendation of MUTO.

1 We next learn that the China Affairs Board,
2 of which HATA was Vice President, outlined a program
3 for the new regime in China (D.D.18). The summation
4 goes at length into this program although no connection
5 is established with HATA, outside of his being a vice
6 president of this board. He is not shown to have
7 been present at the meeting, nor to have had any con-
8 nection with the making of the program.
9

10 Let us look at the record to see how HATA
11 became Vice President of this board. Brigadier Nolan,
12 in his complete exposition of the Japanese government
13 set up at the opening of this trial, referring to this
14 board, stated (p. 543): ". . . and the President is
15 the Prime Minister ex officio. The Ministers of Fi-
16 nance, Foreign Affairs, War and Navy serve as vice
17 presidents. The Director General is the actual admin-
18 istrator. There are fifty officers and sixty clerks
19 to compose the staffs. . ." HATA being a vice president
20 of the China Affairs Board, therefore, is a mere for-
21 mality, one of the offices he automatically assumes
22 upon becoming Minister of War in the Cabinet. And, we
23 repeat, there is no evidence HATA attended this meeting.
24

25 The summation also seeks to show that HATA
"sponsored" the Wang Ching-wei Government in China.

1 Part Two of the prosecution's summation on the conspir-
2 acy gives a complete exposition of the actions taken
3 by and with Wang Ching-wei, beginning in the "spring
4 of 1938" in the formation of a new regime in China
5 (pp. E-71 to E-80). Five of the accused before this
6 Tribunal are named in these pages and the part they
7 played in the setting up of this regime is gone into
8 at length. HATA is not one of them; he is not even
9 mentioned. In June 1939 when Wang was in Tokyo con-
10 ferring about the setting up of the new government and
11 completing the plans for it, he consulted with many of
12 the Japanese leaders, including two of the accused.
13 HATA was not among them (E-77). The summation states
14 (E-78): "On March 30, 1940, the new government under
15 Wang Ching-wei was formally established at Nanking."
16 The plans and preparations for this government had been
17 completed in June 1939 when Wang had come to Tokyo
18 for his series of conferences, and only the formalities
19 took place on March 30, 1940.

20
21 Continuing with the summation, we see a head-
22 ing (D.D.23): "HATA favors advance into French Indo-
23 China." The only evidence which it is claimed con-
24 nects HATA with such a matter is an excerpt from the
25 KIDO Diary wherein KIDO records he had been told that
the military ministers at a Four Ministers' Conference

1 had favored that a request be submitted to the French
2 "regarding the pro-Chiang actions and, if refused by
3 the French, that force be employed." We have already
4 gone into this exhibit in the early part of our summa-
5 tion, and at this time we respectfully point out to
6 the Tribunal that HATA is not named in Count 23, which
7 refers to the initiation of a war against the Republic
8 of France, nor in Count 33, which refers to the waging
9 of a war against the Republic of France.

10 Although we have gone to great lengths on the
11 YONAI Cabinet and HATA's position with reference to
12 the Tripartite Pact, we cannot help but make additional
13 appropriate comment thereon after having read the prose-
14 cution's version in the summation. Mr. Sutton, conscious
15 of the lack of value of the newspaper item he quoted
16 on cross-examination of YONAI, tries to bolster his case
17 by headlining it as (D.L.35) "The Leading Article on
18 Fall of YONAI Cabinet" and then, still not convinced
19 himself that it necessarily is so, he also calls it
20 "The Authoritative Article on Liquidation of YONAI-
21 AKITA Diplomatic Policy." Mr. Sutton has too soon
22 forgotten, or chooses deliberately to forget, that when
23 the defense sought to introduce similar articles, both
24 the Tribunal and the prosecution characterized them as
25 "propaganda" and "hand-outs". It is also worthy of

1 note that nowhere, even in his summation, can Mr. Sut-
2 ton find any corroborating evidence to support the
3 allegedly authoritative newspaper article's informa-
4 tion that HATA sent YONAI a note asking "How about
5 deciding to have the Cabinet resign?"

6 Mr. Sutton lends a most comical note to his
7 summation when, after quoting and reviewing the news-
8 paper article in detail, his next headline after the
9 one already quoted, is (D.D.37) "KIDO's Account of the
10 Fall of the YONAI Cabinet" and this account, which
11 is quoted in toto in the earlier part of our summation,
12 nowhere says anything about HATA's having sent YONAI
13 a note about the resignation of the Cabinet. Apparently,
14 even Mr. Sutton does not believe his "authoritative"
15 and "leading" newspaper article, for KIDO's Diary,
16 quoting as we have already pointed out, Vice Minister
17 of War ANAMI, Chief Cabinet Secretary ISHIWADA, and
18 Premier YONAI himself, gives an entirely different
19 version from that of the newspaper article.
20

21 Mr. Sutton states (D.D.38): "The Three
22 Chiefs' Conference of which HATA was a member, re-
23 fused to recommend a successor." Although he quotes
24 parts of the KIDO Diary, Mr. Sutton very conveniently
25 fails to quote the sentence which reads as follows
(p. 6,247): "As a result of the conference of the

Three Chiefs, it was said that although the selection of a successor was not being refused, it was difficult to choose one and no forecast was possible."

Mr. Sutton scoffs at the defense evidence offered by TANAKA and others that HATA was forced to resign. It was Mr. Sutton who made the successful objections to our introduction of a letter by Chief of Staff His Imperial Highness KANIN ordering HATA to resign. Both TANAKA and SAWADA stated that the Chief of Staff, although apparently the equal of the War Minister, was in reality his superior. Complete confirmation for this fact comes from a source Mr. Sutton dare not impeach -- the prosecution itself. We quote from the prosecution's general summation on the Liability of the Defendants where, speaking of the Cabinet and the Supreme Command, the prosecution says (p. K-15): "This was due to the fact that the chiefs of staff of army and navy, contrary to the practice in all other countries, were not subordinates of the Ministers of War and Navy, but were, in theory, independent and co-equal of those ministers. In fact, they might well be said to have been the superior of those ministers."

By agreement with Mr. Sutton we strike the next three lines, one sentence, which Mr. Sutton believes refers to the letter. Although we disagree with

1 him we will strike it in order to have no dispute.

2 THE PRESIDENT: Mr. Sutton, if you feel any
3 resentment at the references to you, we will be quite
4 prepared to hear you. I have heard crown prosecutors
5 very severely handled in my own court, and at times
6 it has been necessary to rebuke counsel.

7 I feel sure, Mr. Lazarus, that if you were
8 wholly responsible for this summation it would not be
9 in such terms. But there is no reason why you should
10 not give effect to your own views in that matter.
11 On one occasion you even challenged Mr. Sutton's good
12 faith. It amounts to that.

13 MR. LAZARUS: Mr. President, you apparently
14 are under a misapprehension. There is nothing personal
15 in this. Mr. Sutton and I are good friends on the
16 outside. I call on Mr. Sutton many times, and he calls
17 on me. I am merely pointing out mistakes in his summa-
18 tion. I say nothing about his personal good faith and
19 I don't intend to. In fact, you will notice in a
20 couple of places, Mr. President, I skipped words
21 around Mr. Sutton's name which I thought on reading at
22 this time were not proper.

23 From now on I will substitute the words "the
24 summation states" instead of "Mr. Sutton states" then,
25 Mr. President.

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1 MR. SUTTON: May it please the Tribunal,
2 had not this summation been presented before a tribunal
3 composed of judges, men of long experience in the law
4 and in the trial of cases, we would very early have
5 objected to the frequent references to the personali-
6 ties involved in the case. Under the circumstances,
7 we thought we could well leave the matter to the judg-
8 ment of the Members of the Tribunal.

9 THE PRESIDENT: The Judges can be trusted to
10 estimate the value of these references to you at their
11 true worth, but what about the world?

12 MR. LAZARUS: All I am doing is quoting the
13 record, Mr. President, and I will substitute the words
14 "the summation" for "Mr. Sutton." There is nothing
15 personal in this, sir.

16 THE PRESIDENT: Sometime ago in the course of
17 reading this summation you did suggest that Mr. Sutton
18 was knowingly pursuing the wrong course. I cannot just
19 put my hand on the passage, but I can find it before
20 you can conclude and refer to it then.

21 MR. LAZARUS: Well, I move to strike it, Mr.
22 President, if you feel that I did that. I never intend-
23 ed to do that, I assure this Court and I assure
24 Mr. Sutton.
25

THE PRESIDENT: One of my colleagues complains

1 that you are discourteous to Mr. Sutton. You certainly
2 were discourteous to Mr. Tavenner and Mr. Keenan.

3 MR. LAZARUS: I don't see how, Mr. President.
4 I am just quoting these gentlemen from the record.

5 THE PRESIDENT: I refer to your statement as
6 to his comical note.

7 MR. LAZARUS: Well, we move to strike it,
8 Mr. President.

9 THE PRESIDENT: Personally, I would not have
10 taken exception to that.

11 MR. LAZARUS: If there is any question about
12 my being insulting to Mr. Sutton, I consent to having
13 everything stricken. And while we are on the question
14 of insulting people, Mr. President, I still recall that
15 I was accused of treason to my country by this Tribunal
16 while I wore the uniform of my country, and although I
17 have never received an apology, and although I have
18 said nothing about it, I feel you didn't mean it, and
19 you must accept my explanation that I didn't mean any
20 disrespect either to Mr. Sutton or to Mr. Tavenner or
21 to Mr. Keenan. You must note that I am quoting the
22 record; whatever they said is down here. I am quoting
23 it.
24

25 THE PRESIDENT: I said that you addressed
Mr. Keenan and Mr. Tavenner as "Keenan" and "Tavenner,"

1 and that was improper; and so it is improper. I said
2 nothing more than that for myself.

3 MR. LAZARUS: But I quoted that, Mr. President,
4 and I thought it was an inadvertence.

5 THE PRESIDENT: I now refer to page 172,
6 line 5, and also to 173, line 5. On page 172, line 5,
7 you say: "Mr. Sutton, conscious of the lack of value
8 of the newspaper he quoted on cross-examination, tries
9 to bolster his case by headlining it," et cetera.

10 At page 173, line 5, the expression, "even
11 Sutton," appears, but you did not say "even Sutton."

12 MR. LAZARUS: I corrected it to Mr. Sutton.
13 I did read "Mr. Sutton." You can check the record.

14 THE PRESIDENT: You are quite right; you did.

15 MR. LAZARUS: Do you agree that I said
16 "Mr. Sutton" or shall we check the record, Mr. Presi-
17 dent? I know that I had it written in here and that
18 I said it.

19 THE PRESIDENT: Another colleague refers to
20 page 175, line 10, where you suggested lack of
21 honesty. The sum total of all this is that there is
22 a general feeling that the tenor of this summation is
23 offensive.

24 MR. LAZARUS: We will strike the words then.

25 I have acted generally in two dozen courts

1 martial' while this trial was going on, and never
2 once have I been accused of being offensive, and I
3 have used this type of language. I don't say they are
4 dishonest, and I didn't say it. I say they cannot
5 honestly contend that. Now, that is not imputing
6 dishonesty to them.

7 THE PRESIDENT: We judge you, Mr. Lazarus,
8 and your co-counsel, by what you say here and by what
9 you do here -- not by your appearances elsewhere or
10 the uniform you wear.

11 MR. LAZARUS: Well, the United States Marines,
12 whose uniform I was wearing at the time, did not think
13 I was acting in a treasonous manner.

14 This is final argument. We are allowed to
15 argue on what the prosecution has said and done, and
16 if we think they cannot honestly make such a conten-
17 tion we have a right to say they cannot honestly make
18 such a contention. That doesn't accuse them of being
19 dishonest. If the word is objectionable I will strike
20 it out.

21
22 THE PRESIDENT: How you can accuse a person
23 of lacking honesty without accusing him of being dis-
24 honest I am unable to discover; nor can any of my
25 colleagues understand you.

MR. LAZARUS: I mean they honestly can't .

1 contend what they do contend in their summation. Now,
2 if the word is objectionable to you I will strike it
3 out. I think I got it from a quotation or misquotation
4 of the evidence, and if I misused it I will mark it out.
5 If the prosecution or the Court do not want it, the word
6 "honestly" will go out, and I will say, "how can they
7 contend," and I don't see how it will be offensive.

8 THE PRESIDENT: Reasonably contend.

9 We will adjourn for fifteen minutes.

10 (Whereupon, at 1045, a recess was
11 taken until 1100, after which the proceed-
12 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus.

4 MR. LAZARUS: I believe we were in the middle
5 of page 174.

6 The prosecution says (p. K-15): "This was
7 due to the fact that the chiefs of staff of army and
8 navy, contrary to the practice in all other countries,
9 were not subordinates of the Ministers of War and Navy,
10 but were, in theory, independent of and co-equal to
11 those Ministers. In fact, they might well be said to
12 have been the superior of those Ministers."

13 We skip the next three lines. We have agreed
14 with Mr. Sutton that that ~~is the~~ reference to the letter.

15 Mr. Horwitz, in his explanation of the function
16 of the various branches of the government, states as
17 follows (p. 666): "Second, by compelling the War or
18 Navy Ministers, subject to the orders of the high com-
19 mand because of their active service status, to resign,
20 either the army or the navy could bring about the resig-
21 nation of the Cabinet."* This, then, from the prosecution
22 itself should end once and for all any contentions
23 on the part of Mr. Sutton that the War Minister could
24 not be forced to resign from the YONAI Cabinet.
25

1 And finally, how can the summation, in view of
2 all the evidence, especially the prosecution evidence
3 from KIDO's Diary, which we have reviewed for the Tri-
4 bunal in this summation, as well as the evidence offered
5 by SAWADA, YONAI, ARITA, and the prosecution's star
6 witness, TANAKA, reasonably contend that HATA wrecked
7 the YONAI Cabinet? The perfect answer on this point is
8 given to this Tribunal by the chief prosecutor himself.
9 He positively clears HATA and sustains completely our
10 contention that the General Staff ordered and caused
11 HATA to resign when, in cross-examining the accused
12 TOJO, Mr. Keenan asked this revealing and definitive
13 question (p. 36,581):

14 "Q Won't you be candid enough, won't you
15 admit, Mr. TOJO, that it was the General Staff of the
16 Army that caused the fall of the YONAI Cabinet? Won't
17 you admit that fact no matter when you learned it or
18 where you learned it or how?"

19 The summation next takes up the fact that
20 General TOJO succeeded General HATA as War Minister.
21 Although TOJO himself, under Mr. Keenan's cross-
22 examination, stated that the prosecution's translation
23 of this particular excerpt was incorrect, and Captain
24 Kraft, at the request of the President of this Tribunal,
25 verified the correction, and then Mr. Keenan accepted

1 the corrected translation of the word "naiso" from
2 "secretly" to "informal recommendation," the summation
3 persists in quoting the incorrect translation of the
4 excerpt from KIDO's Diary and in using the word
5 "secretly" in its statements in the summation with
6 reference to HATA's visit to the Emperor about TOJO.
7 Having covered this subject in full in the earlier part
8 of our summation, we will not go into it further other
9 than to point out that the summation has chosen again
10 to omit a vital part which would give the true picture
11 instead of a distorted one to the Tribunal. Here
12 defense document 42 in quoting the KIDO Diary excerpt,
13 it skips the part which states that HATA went to the
14 Emperor and recommended TOJO "and Tomoyuki YAMASHITA
15 for Inspector General of the Air Force." The summation
16 makes it appear from his piecemeal quotations that HATA
17 went to the Emperor to recommend only TOJO. The Tri-
18 bunal will recall that when we quoted the full excerpt
19 earlier in our summation, we strongly pointed out to the
20 Tribunal that HATA did not go only for TOJO, but also
21 for the next Inspector General of the Air Force, and
22 that this was no conspiratorial act for the sake of
23 TOJO alone, but an act done in a regular course of
24 Japanese army procedure to recommend a new War Minister
25 and a new Inspector General of the Air Force. That it

1 was proper for HATA to recommend to the Emperor at
2 this time the Inspector-General of Military Aviation
3 is shown to us by Brigadier Nolan who, in explaining
4 the various branches of the government at the
5 beginning of this trial, stated (p. 590): "The
6 Inspector-General of Military Aviation is directly
7 responsible to the Emperor..." This, then, shows
8 that HATA was only exercising his duties, as outgoing
9 War Minister, by informally recommending to the
10 Emperor the succeeding War Minister and the succeeding
11 Inspector-General of Military Aviation, both of whom
12 are directly responsible to the Emperor.

13 For the final time, the summation refers
14 with awe to HATA's position as Military Councillor.
15 This time it headlines it (Defense document 42)
16 "HATA Accepts Appointment Under New Cabinet" and follows
17 it with "HATA stayed with the military clique. On
18 the very day that the Second KONOYE Cabinet, with
19 TOJO as War Minister, was formed, HATA accepted
20 appointment in that Cabinet as Military Councillor.
21 We respectfully submit that the entire question as to
22 whether he had long efficiently worked to force the
23 resignation of the entire YONAI Cabinet and bring into
24 being a strong militaristic cabinet is set at rest
25 by the fact that HATA immediately accepted appointment

1 under this Cabinet. HATA and the leaders of the new
2 cabinet were co-conspirators". Only our respect for
3 this Tribunal keeps us from applying the proper words
4 to these inferences and misinterpretations of the
5 record.

6 THE PRESIDENT: Well, that is offensive,
7 of course.

8 MR. LAZARUS: I beg your pardon, Mr. President?

9 THE PRESIDENT: That is offensive. What
10 epithets you have in mind do not concern us. You
11 did refer to epithets you have in mind, whatever they
12 are.

13 MR. LAZARUS: I didn't read that part, Mr.
14 President.

15 THE PRESIDENT: You did.

16 MR. LAZARUS: No, sir; I said "proper words",
17 Mr. President.

18 THE PRESIDENT: You may not have indulged in
19 abuse.

20 MR. LAZARUS: Well, Mr. President, in my
21 country if we catch some one misinterpreting the evidence,
22 we do explain it thoroughly to the court or make fun
23 or really point out the improper conduct of the other
24 side, and there is nothing wrong in that.

25 THE PRESIDENT: We will let you point out

1 fully what the misinterpretations are; do not
2 misapprehend me. But we do not interest ourselves
3 in our mental reservations about them.

4 MR. LAZARUS: In the first place --

5 THE PRESIDENT: The whole purpose of this
6 summation seems to be to antagonize the Tribunal.--

7 MR. LAZARUS: That isn't so, Mr. President,
8 and you know it.

9 THE PRESIDENT: -- and to misrepresent the
10 Tribunal if the Tribunal resents what is said. It is
11 pure propaganda.

12 MR. LAZARUS: No, it isn't. There is an
13 excellent case here for the accused HATA. It is being
14 presented strongly and I think that is wherein stems
15 the objection to our reading this summation.

16 THE PRESIDENT: You will withdraw those words
17 and you will apologize. Otherwise, we will not hear
18 you further.

19 MR. LAZARUS: If I said anything that offended
20 the Tribunal I do withdraw them and I do apologize. I
21 told you before I never intended to insult either the
22 Tribunal or the prosecution.

23 THE PRESIDENT: We accept your withdrawal
24 and apology, so proceed to read your summation.

25 MR. LAZARUS: As long as we have reached this

1 stage, Mr. President, I want to ask if you intend to
2 apologize to me for having accused me of treason to
3 my country while I was here, or to withdraw the
4 remarks, if you please.

5 THE PRESIDENT: No such remarks were ever
6 made by me. I have nothing to withdraw and nothing
7 to apologize for. You are making a misstatement --
8 not a misrepresentation but a misstatement -- which
9 was wholly without foundation and that is part of the
10 propaganda. If I had accused you of that, you had
11 your remedy and you would have exercised it and it
12 would have been very effective. But you know I never
13 made any such accusation against you or against any
14 other American counsel.

15 For nearly two years I have been meeting you
16 and other American counsel and no such suggestions as
17 you have just made has ever been uttered. You do
18 yourself little credit if you say here, as you do,
19 that I offered you that insult and you did not resent
20 it; during two years.

21 MR. LAZARUS: You are a judge, Mr. President.
22 There is nothing I could say or do to you that would
23 remedy it. But I say once this trial is over I shall
24 seek remedy.
25

I shall continue reading.

1 It is pellucid, we respectfully submit, that
2 only when the letter is addressed to the Vice-Chief of
3 the General Staff, is it the expression of HATA. There
4 is nothing of any nature here to show that a telegram
5 addressed to the Vice-Minister of War expressed the
6 opinion of HATA. Further, all the evidence in the trial
7 shows HATA always dealt with the General Staff, not the
8 War Ministry, with reference to the Doolittle fliers.
9 There is nothing in the evidence that even suggests that
10 HATA was responsible for this telegram.

11 And to show that HATA was not responsible for
12 this telegram, we must ask why it wasn't put to MIYANO
13 when MIYANO testified about HATA's letter by his Chief
14 of Staff to the Vice-Chief of the General Staff in Tokyo?
15 MIYANO would have told him only communications to the
16 Vice-Chief of the General Staff are expressions of HATA,
17 not communications to the Vice-Minister of War. The
18 latter are expressions of the Chief of Staff himself.
19 And why wasn't the telegram put to TANAKA when TANAKA
20 was testifying about HATA's letter by his Chief of Staff
21 to the Vice-Chief of the General Staff? MIYANO and
22 TANAKA were both testifying about the Doolittle trial
23 and the question would have been proper. It is known
24 that TANAKA would have told him the telegram to KIMURA
25 was not HATA's, but the Chief of Staff's. The telegram

was introduced against KIMURA in his individual defense
1 phase, not against HATA. That shows the prosecution
2 knew it was not HATA's document.

3 Why, if the summation thought it was HATA's
4 document, wasn't it introduced in rebuttal against HATA?
5 Because it was known that we could clearly answer it in
6 surrebuttal. The summation is the only place where it
7 is tried to connect HATA with this telegram.

8 Let us examine the telegram itself. After it
9 was read into the record, we have this immediately
10 following (p. 31,822):
11

12 "THE PRESIDENT: That is a very poor translation,
13 isn't it?

14 "COLONEL MORNANE: That is probably so, your
15 Honor. I don't wish to mislead the Tribunal as to this
16 document. This document was part of the I.P.S. files,
17 translation was made, and the document can no longer be
18 found -- the original document."

19 We need say nothing more on the quality of this
20 document.

21 After the telegram, which had been sent to the
22 War Ministry, the summation contains this statement
23 (D.D. 54): "It is reasonable to conclude, we respect-
24 fully submit, that it was the result of this telegram
25 from HATA's Chief of Staff that the discussions arose in

the War Ministry and General Staff concerning which
1 TANAKA testified as to whether these fliers should be
2 treated as prisoners of war or tried under some new law
3 to be promulgated." The evidence was that the War
4 Ministry, despite the alleged telegram, held to the view
5 that the fliers be held as prisoners of war and not be
6 executed. Mr. Keenan understood that, for in cross-
7 examining TANAKA, Mr. Keenan asked (p. 29,046):

8 "A And, if I understand your affidavit or
9 your statement correctly, that was the view held by the
10 War Ministry, to hold these men as prisoners and not to
11 execute them?"
12

13 If the War Ministry had determined to execute
14 the fliers, the summation then could say the telegram
15 was an influencing factor. But that the telegram came
16 too late to have caused the discussions on the treatment
17 of the fliers is shown by this part of Mr. Keenan's
18 cross-examination of TANAKA (p. 29,053):

19 "Q When did this sharp difference of opinion
20 as to the treatment of the fliers occur with relation
21 to the Doolittle raid itself?

22 "A This violent opposition arose immediately
23 upon receipt of word from China that the fliers who had
24 bombed Tokyo had been caught there.
25

"Q That was the next day after the raid?

"A Yes."

1 And the summation states (D.D. 53) that the
2 telegram was sent "within three days after the Doolittle
3 fliers were captured. . ." How, then, can it be said
4 that, "It is reasonable to conclude, we respectfully
5 submit, that it was the result of this telegram from
6 HATA's Chief of Staff that the discussions arose in the
7 War Ministry and General Staff concerning which TANAKA
8 testified . . .?"
9

10 Although Mr. Comyns Carr, in his answer --

11 Does the Tribunal wish to omit the previous
12 sentence as I did?

13 THE PRESIDENT: Well, you are making necessary
14 changes.

15 MR. LAZARUS: I am willing to; I will only be
16 too glad to.

17 THE PRESIDENT: You can put your case fully.

18 MR. LAZARUS: Although Mr. Comyns Carr, in his
19 answer to our motion for dismissal, did not even refer
20 to it because obviously there is no evidence against
21 HATA involved, the summation nevertheless drags up the
22 OGIYA case again (D.D. 60). This concerns the trial and
23 execution of two American fliers in Japan on 18 July 1945.
24

25 OGIYA's affidavit was read during the prosecution's atrocities phase (p. 14,221). The prosecution

1 did not even think the portions about HATA important
2 enough to read but did so when the Tribunal called its
3 attention to it several documents later (p. 14,227).

4 Page 2 of OGIYA's affidavit (exhibit 1925-A)
5 shows Major General OTAHARA, head of the Judicial
6 Department of the Central and 15th Area Army Headquarters
7 investigated the case of the two American fliers. Before
8 the trial, OTAHARA was transferred and Lieutenant OGIYA
9 acted as public procurator in the trial in place of Major
10 General OTAHARA (page 3 of exhibit 1925-A). Commander
11 Cole read the portion pointed out by the Tribunal
12 (p. 14,227):

13 "After Major General OTAHARA completed his in-
14 vestigation, he wrote an opinion based on his investi-
15 gati and forwarded this opinion to Lieutenant-General
16 Bitaro UCHIYAMA, Commander of the Central Army Head-
17 quarters, to get an approval of the death sentence. Then
18 after obtaining the approval of General UCHIYAMA, Major
19 General OTAHARA took his opinion to General HATA who was
20 in command of the Second General Army, and also got his
21 approval of the death penalty. Lastly, Major General
22 OTAHARA took the opinion to the War Ministry in Tokyo
23 and the death penalty was also approved."

24
25 At the request of the defense, OGIYA was brought
here five days later and cross-examined by the defense.

OGIYA testified as follows (p. 14,617):

1 "A The obtaining of the approval of the death
2 penalty may be a mistake in translation. In the light
3 of his office, it is not imaginable that a Procurator
4 could receive an approval of the death penalty. It would
5 be possible, however, for a Procurator to obtain approval
6 of the method of execution. It is possible for the
7 Procurator to obtain approval for a demand for a death
8 penalty."
9

10 On cross-examination by counsel for HATA,
11 OGIYA testified (p. 14,620):

12 "Q Mr. Witness, you stated that you heard
13 that the approval of General HATA was requested. Do you
14 have any more concrete confirmation than that to give
15 this Tribunal?

16 "A The matter to which I have testified did
17 not come to my knowledge directly. They are based on
18 what I heard from my Chief, OTAHARA."

19 And further (p. 14,621):

20 "Q Then, the only information you have as to
21 General HATA's knowledge of this case is the fact that
22 General OTAHARA told you that General HATA had approved?
23

24 "A Yes."

25 And continuing:

 "Q Now, this trial was held under the

1 jurisdiction of the 15th Area Army under the command of
2 Lieutenant General OCHIYAMA, isn't that so?

3 "A Yes."

4 And later on the same page:

5 "Q After the decision was rendered condemning
6 the American fliers to death, was the approval of General
7 HATA for the execution of the sentence sought?

8 "A No.

9 "Q Was the approval of anyone sought before
10 the sentence was executed?

11 "A Commander OCHIYAMA.

12 "Q And that was because OCHIYAMA was Command-
13 ing General of the 15th Area Army which had complete
14 charge and sole charge of this trial, isn't that so?

15 "A Yes.

16 "Q Did you ever see any documents relating
17 to this trial that had been signed by General HATA
18 personally?

19 "A No, I have not.

20 "Q Then, I ask again for the last time, as
21 far as you know, the only connection that General HATA
22 had with this trial is General OTAHARA's statement to
23 you that he, OTAHARA, had gotten General HATA's approval
24 for requesting the death sentence at the trial?
25

"A Yes."

1 And, if the Tribunal please, the prosecution
2 did not bring in Major General OTAHARA, although he and
3 OCHIYAMA, like OGIYA who was produced for cross-
4 examination at our request, were in Sugamo together. If,
5 indeed, OTAHARA had gotten HATA's approval, it would have
6 been a simple matter to have brought him in so to state.
7 OGIYA, who was prosecutor at the trial, and who presented
8 the evidence, stated on cross-examination as just quoted
9 that he never saw any documents relating to that trial
10 signed by HATA.

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1 Although he can point to not one scintilla
2 of evidence showing that HATA was in any wise respon-
3 sible either because he ordered, authorized, or per-
4 mitted his troops to commit atrocities, or because
5 he failed to take proper precautions to prevent the
6 occurrence of atrocities, or because, when information
7 about atrocities came to him he failed to take proper
8 action, or because the alleged atrocities were of such
9 a magnitude that he must have known of them, the sum-
10 mation nevertheless seeks to lay full responsibility
11 for all atrocities in China, both against civilians
12 and prisoners of war, at HATA's door. It ignores
13 completely any require to show that responsibility
14 lay with HATA. It ignores the system of the army chain
15 of command and the responsibility within that command
16 for military discipline and the conduct of the troops.
17 It ignores all the evidence, both prosecution and
18 defense, showing where the responsibility for atroci-
19 ties should be placed. It ignores the fact that Mr.
20 Justice Mansfield in his opening statements on the
21 prosecution's atrocities phase, in which he names
22 many of the accused, does not name HATA. It ignores
23 the fact that nowhere has there been introduced a
24 scrap of evidence connecting HATA with prisoners of
25 war or even that he was responsible for prisoners of war.

1 Let us examine the record, from the prose-
2 cution's own evidence, as to who should be respon-
3 sible for such matters. The prosecution assumes
4 (D.D. 50) that because "HATA was in command of the
5 Expeditionary Forces in China from March 1941 to
6 November 1944, and that the responsibility of HATA for
7 those acts of the soldiers under his command is clear
8 and inescapable" that that makes it so. "We have al-
9 ready thoroughly set out for the Tribunal the actions
10 taken by HATA to prevent the occurrence of atrocities
11 and the testimony of the officers and men under HATA
12 as to the non-occurrence of atrocities.

13 HATA was Commander of the Expeditionary Force
14 in China: he was not in command of troops. His posi-
15 tion was identical with that held by General Eisenhower
16 in the European Theatre. As the evidence of YOKOYAMA,
17 SAWADA, and others already quoted shows, high-ranking
18 Japanese generals were in command of the various
19 armies and area armies in China. Theirs was the re-
20 sponsibility for the maintenance of discipline by
21 their troops and the care of prisoners of war in the
22 camps in the areas under their control. That in each
23 instance it is the army commander who is responsible
24 for the discipline of his troops, we will prove through
25 unimpeachable sources, namely, those of the prosecu-

tion itself.

1 We begin with the prosecution's prisoner of
2 war summation (p. J-8) where, speaking of prosecu-
3 tion rebuttal documents on prisoner of war camps, it
4 is stated: "They show that the Red Cross visit to
5 the camp was deferred from April to August 1942 at the
6 urgent request of the Chief of Staff of the 13th
7 Army..." Let us examine the exhibits referred to.
8 On inspection of the record, these documents are seen
9 to be a series of telegrams; the first (38,153): "is
10 a telegram dated 10 April 1942 from POW Information
11 Bureau to Chief of Staff, 13th Army." Colonel Mornane
12 read into the record the following two pertinent para-
13 graphs:
14

15 "Although permission had been requested some
16 time ago by the Swiss Consul-General in Shanghai and
17 the representatives of the International Red Cross Com-
18 mittee to inspect the Shanghai P.O.W. Camps and
19 report on its condition to the nations concerned
20 after having personal talks with the prisoners of war,
21 in consideration of the fact that the preparation and
22 equipment of the camp had not been completed at that
23 time so soon after the fighting, we have kept it
24 postponed until this day.
25

"It is our presumption that you have com-

1 pleted arrangements by now and so in accordance with
2 international provisions intend to permit the tour of
3 inspection of our Shanghai P. O. W. Camp in the near
4 future. Please let me know your opinion on the
5 matter as soon as possible."

6 The second document (exhibit 3843-A) "is a
7 reply to the previous exhibit" and is from "adjutant
8 of the 13th Army" to "Chief of the POW Information
9 Bureau." It states (38,155):

10 "As to the inspection of the camp by the
11 Swiss Consul-General in Shanghai and the representa-
12 tives of the International Red Cross Committee, I am
13 of the opinion that it should be postponed for a while
14 because the arrangement of the camps, such as the dis-
15 pensary, sick-room, kitchen, bath and other places
16 concerned, are not yet completed, and also the fact
17 that a part of the prisoner of war room is being
18 renovated. Besides these things, the present mental
19 attitude of the prisoners is not reasonable."

20 The next document (Ex. 3843 B, p. 38,155)
21 "from P.O.W. Information Bureau to the Chief of Staff
22 of the 13th Army and is in reply to the previous ex-
23 hibit." It states (p. 38,156):

24 "The various installations of the Shanghai
25 prisoner of war camp should be improved as quickly

1 as possible so that there may be no trouble on the
2 occasion of the inspection to be made by the foreigners.

3 "When you consider the proper time for
4 inspection has been reached, please let me know
5 immediately."

6 My friend has asked me to read the first
7 paragraph of this document, and I have no objection
8 if the Tribunal has none:

9 "The inspection of the Hong Kong prisoner
10 of war camp by the delegates of the International Red
11 Cross Committee is to be permitted early in May."

12 This, then, from the prosecution's own evi-
13 dence introduced in rebuttal by Colonel Mornane shows
14 that the POW Information Bureau in Tokyo dealt direct-
15 ly with the 13th Army in Shanghai. HATA is nowhere
16 mentioned nor his headquarters. It is each army that
17 is responsible for military discipline and for prisoners
18 of war, not the China Expeditionary Force Headquarters
19 of HATA. The Tribunal will note that nowhere through-
20 out the entire trial has there been one scintilla of
21 evidence, direct or indirect, that HATA or his head-
22 quarters were involved in the question of atrocities
23 against civilians or inhabitants of prisoner of war
24 camps. The various armies had total and complete
25 jurisdiction and responsibility for these matters.

HATA in his headquarters could not be all over the vast face of China at once and, very properly, authority and responsibility for maintenance of discipline, prevention of atrocities and the treatment of prisoners of war were placed with those in command of the troops in the field, the commanders of the several armies.

We continue with the prosecution's summation (p. J-33): "At the War Ministry, any protests received were discussed at the bi-weekly conference between the Minister, Vice-Minister, and the Bureau Chiefs. After this, they were forwarded by the P.O.W. Information Bureau to the Army Commander of the area in which the grounds of the protest had arisen, and also to the Chief of POW camps in that area." Here again we see that it is the "Army Commander" who is given the responsibility by the Japanese government for the maintenance of discipline and the proper treatment of the prisoners of war. And all this, if the Tribunal please, is from the prosecution summation on atrocities and prisoners of war, and every statement just quoted is well-documented with citations from the record of this trial.

And we have one final authority to offer the Tribunal to support our contention that the army heads and not the Commander of the China Expeditionary

1 Force were responsible for the maintenance of dis-
2 cipline and proper treatment of prisoners of war.

3 This, too, like our previous quotations on the sub-
4 ject, was offered by the prosecution itself, and we
5 respectfully submit is absolutely conclusive on the
6 point and proves our contention beyond any shadow of
7 doubt. This was offered to the Tribunal by Brigadier
8 Nolan when he was explaining the functions of the
9 various branches of the government. He states in
10 speaking "about the administration of prisoners of
11 war" (594): "By Imperial Ordinance, exhibit 92 in the
12 case, number 1182 of 23 December 1941, prisoner of war
13 camps were placed under the jurisdiction of the Min-
14 ister of War. The Ordinance provided that they were
15 to be administered by a Commander of an army or a
16 Commander of a garrison under the general supervision
17 of the Minister of War." This, then, shows that it
18 was the army head and the garrison commander who were
19 responsible in these matters, and the example of that
20 is to be found in the three prosecution exhibits which
21 we have quoted in full. These exhibits are telegrams
22 going from the POW Information Bureau in Tokyo to the
23 13th Army in Shanghai and vice versa, and concern
24 matters relating to POW camps and their inhabitants.

25 With this conclusive evidence produced by the prosecu-

tion itself and absolutely absolving HATA of any

1 responsibility for the alleged atrocities, we conclude
2 our answer to the atrocities phase in the prosecution's
3 summation against HATA.

4 At the end of the summation, still writing
5 of "HATA who went secretly to the Emperor and recommend-
6 ed TOJO", although, as we have pointed out, the cor-
7 rection had been made in the record and even accepted
8 by Mr. Keenan in his cross-examination of TOJO, by
9 taking fractions of sentences from KIDO's testimony,
10 it tries to make out an evil thing in TOJO's recommend-
11 ation of HATA as a possible candidate for Prime
12 Minister to succeed KOISO when KOISO's Cabinet resigned
13 in April 1944 (D.D. 61), It does not mention that
14 TOJO had stated that "a General or Admiral in active
15 service" be next Premier because of the critical
16 Japanese position in the war at that time, nor that
17 TOJO didn't mean that the Premier should be decided
18 at that meeting. To set the record straight, we will
19 quote in full the three speeches by TOJO, at this
20 conference, that are cited by the summation.

21 In the first passage cited, here is the com-
22 plete quote by KIDO of TOJO's statement about HATA
23 (p. 31,121): "He contended that Marshal HATA be chosen
24 as succeeding Prime Minister on the ground that the
25

1 wer situation had entered upon a state in which a
2 decisive battle would have to be fought in the Japan-
3 ese mainland and therefore that the next Prime Min-
4 ister must be a General or Admiral in active service."

5 The summation very conveniently omits this
6 quote, but we think it should not be omitted (31,131):

7 "TOJO: I do not mean to say that the Premier
8 should be decided at this meeting. I meant that it
9 should be submitted as a material to His Majesty so
10 that he can prepare himself."

11 The next quote is the one from which frac-
12 tions of sentences had also been taken (33,139):

13 "TOJO: The attitude of Admiral SUZUKI is
14 truly fine. The developments of the war are beyond
15 conjecture. The enemy is getting impatient. He will
16 try a bold strategy. He is likely to attempt landing
17 somewhere on Japan proper. Home defense, then, will
18 become the vital point. The government and the com-
19 mand must be fused into one. Here the army must be
20 considered as the principal body. In this sense, we
21 must have a soldier on the active list. Historical
22 instances have been cited, but Japan is different from
23 the countries of Europe. In their case, the command
24 got into the government. The character of our command
25 is naturally different. From this standpoint, I be-

1 believe Marshal HATA is suitable."

2 And the last citation (31,141):

3 "TOJO: At the present when our land is about
4 to become a battlefield, we must take special care or
5 else there is a fear that the army may take an aloof
6 standing. If the army takes an aloof standing, the
7 Cabinet will collapse."

8 TOJO, then, is only stating that, because of
9 Japan's precarious military position, "the next Prime
10 Minister must be a General or Admiral in active ser-
11 vice." And he names HATA as a candidate for the posi-
12 tion, although, as he says, "I do not mean to say that
13 the Premier should be decided at this meeting." From
14 this how can the summation state to this Tribunal
15 (D.D. 61) that TOJO "threatened to again use the army
16 influence to wreck the Cabinet if HATA were not chosen..."
17 If there were any kind of a case against HATA -- strike
18 the rest of that sentence. This closes our review of
19 the prosecution's summation against HATA.

20
21 Although counts 37 and 38 were dropped by
22 the prosecution in its general summation, we wish to
23 refer to them for a moment to show that HATA, who was
24 War Minister until 16 July 1940, is not considered
25 by the prosecution as having "worked on the plans and
preparations for an aggressive war" while he was War

1 Minister. Counts 37 and 38, which alleged that be-
2 tween the first of June 1940 and 8 December 1941
3 various named accused as leaders, organizers, in-
4 stigators, or accomplices conspired to initiate unlaw-
5 ful hostilities against the countries therein named,
6 do not name HATA, although he was War Minister for one
7 and one-half months during the period covered by these
8 counts. The prosecution realized then, as it must
9 realize now, that HATA was not working on plans and
10 preparations for war while he was War Minister. If
11 he had, he would have been named in these counts, for
12 he held office during that time.

13 HATA, if the Tribunal please, was, throughout
14 the period covered by the indictment, a soldier first,
15 last, and always. He never belonged to a single
16 association, political party, group, society, brother-
17 hood, or clique. He never made speeches, wrote pam-
18 phlets or articles, molded public opinion, formulated
19 public policy, or engaged in politics. The only time
20 that he is officially quoted on any matter whatsoever
21 was when he, as War Minister in 1944, answered ques-
22 tions on two occasions in the Diet and stated un-
23 equivocably that he supported the YONAI Government's
24 policy. That is the only time HATA has ever been
25 quoted officially in any document offered to this

Tribunal by either side.

1 The only time he was in a policy-making
2 position was as War Minister in the short-lived,
3 conservative ABE and YONAI Cabinets. He was never a
4 member or a leader of the "young officer" group. He
5 never appeared in any theatre outside of China and,
6 then not as a commander of troops but as Commanding
7 General, first, of the Central China Expeditionary
8 Forces, and the second time, for almost four full
9 years from 1 March 1941 to November 1944 as Commanding
10 General of the China Expeditionary Forces.

11 It is a most amazing thing that in twenty
12 months of trial the prosecution has introduced not one
13 witness against HATA himself, but has attempted to
14 build up its entire case on excerpts from KIDO's Diary,
15 documents referring to actions by others, and by hear-
16 say evidence.

17 The absence of any direct evidence as to non-
18 military activities by HATA proves that he lived, as
19 TANAKA told us, by the rule he set down for others
20 while he was War Minister -- "no politics." His con-
21 duct has at all times been above reproach and there
22 is not one scintilla of evidence that he was ever
23 consciously, or unconsciously, a member of any con-
24 spiracy or series of conspiracies. He was, we repeat,
25

1 at all times a professional soldier serving his
2 country, in the highest sense of the word.

3 In this lengthy trial the prosecution has
4 produced documents about the Emperor and HATA's asso-
5 ciation with him and has sought to draw inferences
6 and conclusions therefrom. Since it used the Emperor's
7 name so often, why did not the prosecution have the
8 requisite respect for this Tribunal to produce the
9 Emperor as a witness, rather than resort to third and
10 fourth hand hearsay for their evidence against HATA?
11 It will forever be recorded as a source of wonder
12 indeed that in the greatest trial in history the
13 prosecution did not have the resolution to produce
14 the one man who could have told us so much so succinct-
15 ly.
16

17 HATA was, we respectfully submit, a member of
18 the honorable profession of arms. He devoted his
19 life to the service of his country. When war, which
20 was not of his making, came, he fought without ques-
21 tion.

22 HATA is not guilty of the charges made against
23 him before this Tribunal.

24 THE PRESIDENT: Major Blakeney.

25 MR. BLAKENEY: Shall I proceed, your Honor?

THE PRESIDENT: Yes. Your general summation

1 was not read because. I understand, there was delay
2 in typing Japanese copies.

3 MR. BLAKENEY: Yes, that is correct.

4 THE PRESIDENT: We are ready to hear you,
5 Major Blakeney.

6 MR. BLAKENEY: THE JAPANESE-AMERICAN
7 NEGOTIATIONS. INTRODUCTORY.

8 1. The next branch of the summation will
9 treat of a subject which has loomed large throughout
10 these proceedings, and may justly be regarded as the
11 heart of the case: the Japanese-American negotiations
12 of 1941. The title is a misnomer (but serves because
13 of its familiarity): the Japanese-American negotiations
14 were but an aspect of the relations of Japan with the
15 United States, the British Empire, the Netherlands,
16 France -- those Western Powers whose colonial or commer-
17 cial interests in the Pacific threw them into contact
18 with Japan -- and China, her great neighbor in Asia
19 with whom she had fallen to quarreling. It was a time
20 when relations were bad; Europe was at war, and the
21 possibility of war in the Pacific was recognized to be
22 not immeasurably remote. These negotiations, in which
23 America acted for the other Powers, served to bring
24 into focus the questions which had resulted in those
25 conditions and to make them explicit; and plainly

1 would lead either to their settlement in peace or to
2 a final failure to solve them except by resort to
3 arms.

4 The subject is thus far broader than its
5 title indicates. While ostensibly discussing the
6 negotiations which took place in Washington from
7 April to November of 1941, we shall in reality be
8 searching for the reasons and causes of the Pacific
9 war. Nor can the subject be considered in vacuo;
10 the Tribunal will wish to and indeed must view the
11 coming of war between Japan and the other Powers
12 against the backdrop of the times: Japan entangled
13 in an endless war, America and her allies arming in
14 fear of the European aggressor; mutual suspicion in
15 the Pacific, leading in its turn to more arming;
16 economic warfare, whether cause or effect, of the
17 other Powers against Japan. While these things cannot
18 be forgot in studying the Japanese-American negotia-
19 tions, they are being argued elsewhere. Considering
20 them as a whole, the Tribunal will find its answer
21 to the question, "Was the Pacific war an act of aggres-
22 sion by Japan such that her leaders now here in the
23 dock should be punished as criminals for bringing it
24 about? Or did they make efforts to prevent it, by
25 sincere search for a peaceful solution?" That is the

significance of the Japanese-American negotiations.

2. The prosecution have provided the Tribunal, in their extended summation¹ on the subject, with an elaborate, comprehensive, and able survey of the United States' position in the negotiations. I have advisedly said "a survey of the United States' position"; for while the argument purports to trace the negotiations in detail from their beginning, making some reference to the successive proposals and counterproposals and the conversations, and to draw therefrom the conclusions presented, those conclusions are for the most part not founded upon nor stated in terms of the evidence so reviewed, but are copied verbatim from one or more of the official United States Government publications of its views.² Those publications naturally and properly state the national policy of the United States; but they have nothing to do with this criminal trial. On the other

1. Summation, Sections G-53 - G-152 (Tr. 39582-702).

2. Much of the identical language of the summation will be found in some or all of the following works: Department of State, Peace and War; United States Foreign Policy, 1931-1941 (1943); Department of State, Papers Relating to the Foreign Relations of the United States--Japan: 1931-1941 (1943); Statement of Cordell Hull, in Seventy-Ninth Congress, First Session, Hearings before the Joint Committee on the Investigation of the Pearl Harbor Attack (1946), ii, 406-45; affidavit of Joseph W. Ballantine, Exhibit 1245 (Tr. 10712-849, taken largely from the foregoing).

1 hand, we cannot avoid noticing a tendency of the
2 prosecution to take umbrage when any of these
3 defendants ventures in any degree to criticize this
4 United States policy; the summation is sprinkled
5 extraordinarily thick with such epithets as "absurd,"³
6 "brazen,"⁴ "vituperative,"⁵ "insolent."⁶ Why should
7 American policy be so sacred? Is it only because
8 it has prevailed by force of arms? Is it necessary
9 to assume even for purposes of prosecution that
10 every difference of opinion with us must be a dis-
11 honest one? It is not to be expected that a Tribunal
12 composed of representatives of the Powers victorious
13 in a late war should by its judgment condemn the
14 policies of those nations or any of them. Neverthe-
15 less, a little judicial experience or practice at the
16 bar -- not to say intelligent observation of the
17 affairs of everyday life -- suffices to cure one of
18 any callow belief that in human differences one side
19 is normally white and the other black. It is rarely
20 indeed that the question is not rather of more or less
21 discriminable shades of gray. Nor, if we may credit

23 3. Summation, Section G-159 (Tr. 39710).

24 4. Id., Section 30 (Tr. 38975), Section G-128-A
(Tr. 39673), Section G-153 (Tr. 39703),
Section G-158 (Tr. 39710).

25 5. Id., Section 6 (Tr. 38952).

6. Ibid., Section 38 (Tr. 38981).

1 the teaching of history, does the case differ with
2 those aggregations of humans constituting nations:
3 if anything, while nations may be rather more prone
4 to be dogmatic about white and black, the complexities
5 of international intercourse render them even the
6 less likely to be correct..

7 3. Another tendency which one has been
8 able to note during these proceedings is that of
9 insinuating that defense counsel, when their duty
10 has required them to suggest that the conduct of
11 their own country was something less than impeccable,
12 have been guilty of gratuitous lapses from good taste,
13 if not of something unpatriotic or, it may be,
14 bordering on the treasonable. To such suggestions
15 a lawyer is and ever has been contemptuously imper-
16 vious; however ungrateful the duty, it is there to
17 be done. But what the authors of such suggestions
18 overlook is that we are here concerned with no
19 questions of the policies of any nation; Japan is
20 not here on trial, despite an occasional suggestion
21 by the prosecution that these proceedings were
22 intended as "more than a mere trial of individuals,"⁷
23 nor do this Tribunal's duties require it to bestow
24 any accolade upon the conduct or motives of the
25 7. Summation, Section 15 (Tr. 38959).

1 United States of America or any other nation, to
2 protect anyone or to defend any policy. The dis-
3 tinction is plain between political decision,
4 arrived at on the basis of national policy, and
5 judicial decision, rendered on the basis of law and
6 the evidence. This Tribunal was not established
7 as an instrument for the better enforcement of the
8 national policies of its constituent nations, or any
9 of them, or of what the judges believe those policies
10 to be. Whatever the incidental effects of its judg-
11 ment, its function is not the making of history, but
12 the trying of twenty-odd men on specific charges of
13 alleged wrongdoing. To administer justice according
14 to law -- the law, before which all men are equal --
15 such is its sworn duty and its avowed purpose.

16 4. In this study of the diplomatic
17 negotiations of 1941, I shall be considering the
18 official acts of two nations, my own and Japan.. It
19 need not even be said that in doing so I shall be
20 expressing, as best I am able, the views of Japanese,
21 of these defendants; but I make it my purpose to
22 analyze those acts, as they are disclosed by the
23 evidence, with the utmost of detachment, and dis-
24 passionately as I am able. The prosecution have
25 treated the long negotiations for the settlement of

1 United States of America or any other nation, to
2 protect anyone or to defend any policy. The dis-
3 tinction is plain between political decision,
4 arrived at on the basis of national policy, and
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20 expressing, as best I am able, the views of Japanese,
21 of these defendants; but I make it my purpose to
22 analyze those acts, as they are disclosed by the
23 evidence, with the utmost of detachment, and dis-
24 passionately as I am able. The prosecution have
25 treated the long negotiations for the settlement of

1 Pacific problems not only as being on the Japanese
2 side conducted in bad faith, but as themselves con-
3 stituting a conspiracy.⁸ It may be permissible to
4 retain doubts that a man becomes a conspirator even
5 by being sufficiently often stigmatized as such by a
6 prosecutor; but at any rate, the charge of conspiracy
7 in the Japanese-American negotiations is a two-edged
8 sword. If Japan's officials were conspiring by
9 insincerely negotiating to gain time for war prepara-
10 tions, to prepare for defense, so by their own showing
11 were the American officials.⁹ Feeling such an
12 a priori approach to be valueless, we shall treat
13 the matter otherwise: examine the evidence, and let
14 it lead us to a posteriori conclusions.

15 5. This evidence falls into a like pattern,
16 prosecution and defense. Documents, in considerable
17 numbers, selected chiefly from the official records
18 of the two Governments -- proposals, explanatory
19 statements and memoranda of conversations, and Japa-
20 nese telegraphic correspondence (either in the
21 original form, or as intercepted and deciphered by
22 the United States authorities) between the Foreign
23 Ministry in Tokyo and its Embassy in Washington,
24

25 8. Summation, Section G-51 (Tr. 39579).

9. Ex. 2840 (Tr. 26362-63);
Testimony of Ballantine (Tr. 11009-10).

1 where the negotiations took place. And, on each
2 side, as witness, one who participated in the
3 negotiations; intended by his testimony to bring
4 into perspective the whole of the subject as seen
5 from the respective vantage points of Washington and
6 Tokyo -- Joseph W. Ballantine and YAMAMOTO, Kumaichi,
7 roughly counterparts in the positions which they
8 occupied in the two foreign countries.

9 THE PRESIDENT: We will adjourn now until
10 half-past one.

11 (Whereupon, at 1200, a recess
12 was taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: 6. It is unnecessary and would be a trespass upon the Tribunal's patience to trace again in detail the entire course of the negotiations, as has been done by the prosecution in summation. We may accept their general outline of the chronology and proceedings -- of course rejecting many of their interpretations and inferences. I propose rather to consider the matter under, broad, general heads. The argument of the prosecution proceeds upon the theory that Japan, conducting the negotiations with no intention that they should arrive at fulfillment through any agreement but openly in the spirit of making no concessions, demanding the opponents' surrender under the threat of war, thereby demonstrated her insincerity in negotiating at all -- thus inferentially establishing the conspiracy. They take their stand squarely on the ground of "the shallowness and even falsity of the Japanese defense that they had made concession after concession and

1 that the United States had remained adamant. The
2 truth is that from the beginning to the end there
3 was never a change in the policy of Japan. . . There
4 was never a basic alteration or concession made in a
5 single term.¹⁰"

6 On this ground we shall meet them.

7 7. The negotiations commenced on 9 April
8 with a privately-prepared draft of a proposed under-
9 standing to embrace and solve all the outstanding
10 points of contention between the two nations. Prose-
11 cution witness Ballantine for some reason chose to make
12 an issue of just how and by whom the negotiations were
13 commenced: he is most -- one might even say suspicious-
14 ly -- eager to insist at every opportunity that the
15 initiative was taken by Japan, that "Japan asked for
16 an agreement", the United States did not. This informa-
17 tion was volunteered by him on at least ten separate
18 occasions in the course of his testimony.¹¹ His con-
19 tention is worth examining briefly, for while strictly
20 it is perhaps immaterial upon whose initiative nego-
21 tiations commenced, the answer will help to explain
22 the frame of mind of this witness and of the State
23 Department which he represented in the negotiations.
24
25

(10. Summation, S-30. T. 38975)

(11. T. 10868, 10,869, 10,887, 10,912, 10929, 11003,
11019, 11027, 11159)

1 First, however, a word concerning the testimony of
 2 Ballantine in general. His so-called affidavit¹² is
 3 a curious document. This witness was given an extra-
 4 ordinary introduction to the Tribunal as an "eminently
 5 qualified" expert on the international relations of
 6 the Far East in general, and of those of the United
 7 States of America, Japan and China in particular,
 8 wherefore his testimony would "include his own con-
 9 clusions and those of his associates in the State
 10 Department", and "language designed to not alone clar-
 11 ify but to characterize."¹³ It fully measured up to
 12 this description; it is a mass of conclusions, irrele-
 13 vancies and opinions, all so inextricably interwoven
 14 with a modicum of factual matter that if they were
 15 removed the remaining ten percent or less would be
 16 unintelligible.¹⁴ Nor are the opinions even the witness'
 17 own;¹⁵ he admitted that some 65 percent of the document
 18 was not his expression, but was taken verbatim from
 19 various Department of State publications (careful
 20 (12. Ex. 1245, T. 10714)
 21 (13. Statement of prosecutor, T. 10710)
 22 (14. The Tribunal over objection received the entire
 23 document in evidence, stating that all conclusions and
 24 opinions contained in it would be disregarded (T.10716,
 25 10850). Since the entire document went into the record,
 however, it should in fairness be noted that reference
 to any standard work of history will cast grave doubts
 on many of the witness' dogmatic statements concerning
 Japanese actions and motives in the period from "Japan's
 emergence as a modern state" to 1928 (T.10719-30, 10742-
 43), as well as those with which it is the duty of this
 Tribunal to pass upon.)
 (15. T. 10852)

1 search shows that substantially more of it was so
2 compiled).¹⁶ His testimony given under cross-examination
3 can fairly be characterized, as will be shown by exam-
4 ples in the course of this discussion, as evasive and
5 unsatisfactory. He was, at all events, utterly sure
6 of the two points: that it was at Japan's initiative
7 that the negotiations were opened, and that the Japan-
8 ese position in the course of them was "successively
9 narrowed",¹⁷ each proposal being "narrower"¹⁸ than the
10 last one, or "on its face extreme."

11 8. On 14 February 1941 Secretary Hull accom-
12 panied Ambassador NOMURA for his first call upon
13 President Roosevelt. The President on that occasion
14 gave a rather broad hint to the Ambassador to the ef-
15 fect that it would be desirable to undertake discus-
16 sions in the effort to improve Japanese-American rela-
17 tions:

18 "He then said that in view of all these
19 serious conditions which are becoming increasingly
20 worse and which seriously call for attention, it oc-
21 curred to him that the Japanese Ambassador might find
22 it advisable and agreeable as he, the President, does,
23 to sit down with the Secretary of State and other
24

25 (16. The documents in question are listed in Note 2,

supra.)

(17. T. 10890)

(18. T. 10811)

1 State Department officials and review and re-examine
2 the important phases of the relations between the two
3 countries, at least during the past four or five years,
4 and frankly discuss all of their phases and ascertain
5 just when and how points of divergence developed and
6 their effects, and bring the whole situation in these
7 respects up to date in order to see if our relations
8 could not be improved. The President said there is
9 plenty of room in the Pacific area for everybody, and
10 he repeated this statement with emphasis.¹⁹

11 Following this, Ambassador NOMURA called on
12 Secretary Hull on 8 March, at which time the Secretary
13 again urged the Ambassador to undertake conversations
14 for the adjustment of relations.

15 "On two or three occasions I inquired of him
16 whether it was still agreeable to pursue the President's
17 suggestion of talking over and discussing the past
18 relations between our two governments and the questions
19 that have arisen which call for settlement by mutual
20 agreement."²⁰

21 Ambassador NOMURA was not notably enthusiastic;
22

23 "He indicated his favorable disposition in

24 (19. Memorandum by Secretary of State (These are cited
25 hereinafter as "Memorandum"), Ex. 1043, T.9799-
800).

(20. Memorandum, Ex. 1056, T. 25677)

1 regard to the matter, but not in any specific way as²¹
2 to time or as to officials with whom he might talk."

3 Again on 14 March the Ambassador called on the
4 President, and again the Secretary in the presence of
5 the President further pressed him to "take the inia-
6 tive" in negotiations: the Secretary "made it clear
7 that Japan, having departed from the course that both
8 nations have been pursuing, the initiative and respon-
9 sibility are hers to suggest what, how and when, she
10 is willing, as a preliminary step, to undertake serious
11 discussions . . ."²²

12 9. Meanwhile, a draft of a proposed agreement
13 which should settle the outstanding problems between
14 the two nations was being worked on by a number of
15 Japanese and American private citizens. Some of the
16 details of the drafting of this document are obscure,
17 but it seems that the draft proposal so prepared was²³
18 brought to the notice of the Secretary of State by the²⁴
19 Postmaster General of the United States (who, as is
20 well known, is in the usual course the President's
21 confidante in the Cabinet); Ambassador NOMURA certainly²⁵
22 had some knowledge of it and took some part in its

24 (21. Id. T. 25677-78)

(22. Memorandum, Ex. 2868, T. 25680)

25 (23. Ex. 1059, T. 9851)

(24. Testimony of Ballantine, T. 10856)

(25. Ex. 1060, T. 9863)

preparation, and according to his report at least one section was inserted in it at the desire of the President ("the highest American authority"), and others at American insistence. Secretary Hull, at all events, certainly proposed that negotiations commence on the basis of it; he requested the Ambassador to call on him on 14 April, and "Near the close of the conversation I suggested that, having cleared up these preliminary phases for which I sent for him, we could, if desired on his part, proceed at any time with certain preliminary discussions with a view to ascertaining whether there is a basis for negotiations"

Whatever may be the details concerning the origin of this first draft of an agreement, it was understood by the authorities in Tokyo to represent an American proposal presented in pursuance of an American suggestion to negotiate for an agreement; so much is abundantly clear from the explanation of the then Premier, Prince KONOYE, of the understanding upon which it was received by the Japanese Government. ³⁰ Ambassador NOMURA asked, and as a result of long cabinet

(26. Ex. 2870, T. 25683-4)

(27. Telegram from NOMURA to KONOYE, Ex. 2871, T.25686)

(28. Id. T. 25689-91)

(29. Memorandum, Ex. 2869, T. 25681)

(30. Ex. 2866, T. 25694-700)

31

discussions was granted, authority to open negotiations; but he was instructed to negotiate on the basis not of the supposed American draft proposal but of a counter-proposal, differing in many respects, which was sent to him and by him presented to Secretary Hull on 12 May.³²

THE SUBJECT-MATTER OF THE NEGOTIATIONS

10. The prosecution's contention we have seen to be that from beginning to end of the 1941 negotiations Japan made no concessions from her original position, such changes as did occur being in the direction of "narrowing" her proposals.³³ In order to test this conclusion, it is necessary to have clearly in mind Japan's original position in the negotiations, as contained in this draft proposal. A reading of the entire document is of course indispensable to an understanding of the subject; but it may be worthwhile at this stage to summarize its principal points. Omitting the preliminary matters and the statements of principle and policy -- none of which ever proved a stumbling-block in the negotiations -- we find the first substantive question discussed to be that of "the attitude of both governments toward the European war"³⁴ Japan

(31. Ibid)

(32. Ex. 1070, T. 9891)

(33. Summation § 30, T. 38975 and Section "G", passim.)

(34. T. 9895-96)

1 maintained that its alliance with the Axis Powers was
2 defensive, and designed to prevent nations not then
3 directly affected by the European war from engaging in
4 it, and that "its obligations of military assistance
5 under the Tripartite Pact between Japan, Germany and
6 Italy" were to be applied in accordance with Article
7 III thereof. The United States was reciprocally to
8 affirm that its attitude toward the European war was
9 to be "directed by no such aggressive measures as to
10 assist any one nation against another." Under the next
11 heading, that of "the relations of both nations toward
12 the China Affair,"³⁵ the United States was to acknowledge
13 the "KONOYE Three Principles" and the elaboration there-
14 of in the treaty with the Nanking Government and in the
15 Japan-Manchukuo-China joint declaration, and was forth-
16 with to request the Chiang Kai-shek regime to negotiate
17 peace with Japan. Nextly, in connection with "commerce
18 between both nations",³⁶ upon conclusion of an under-
19 standing the United States and Japan were to assure
20 to each other mutual supply of available and required
21 commodities, and to restore normal trade relations as
22 theretofore under the Treaty of Commerce and Navigation.
23 "Economic activity in the Southwest Pacific area"³⁷ called
24

25 (35. T. 9896-7)

(36. T. 9897)

(37. T. 9897)

1 for American cooperation to be given in the production
2 and procurement of natural resources required by Japan,
3 presumably in the "Southwestern Pacific area." The
4 last division of the subject-matter is "political
5 stabilization in the Pacific area", ³⁸ containing two
6 topics: that the United States and Japan should joint-
7 ly guarantee the independence of the Philippine Islands
8 on the condition of their permanent neutralization
9 and of Japanese subjects not being there subjected
10 to any discriminatory treatment; and that "amicable
11 consideration" should be given to the question of
12 Japanese immigration to the United States on the basis
13 of equality with other nationals. The annex to this
14 counter-proposal consists, in the form of an "oral ex-
15 planation", of elaboration on certain of the points
16 above referred to. The "KONOYE Principles" are set
17 out, and their implications there detailed; in addi-
18 tion, explanations were given for various deletions
19 from and alterations in the text of the original draft
20 proposal of 16 April.

21 11. This proposal was on 16 May discussed at
22 some length between Secretary Hull and Ambassador
23 NOMURA. The Secretary at that time handed to the
24 Ambassador some "draft suggestions" relating to the
25 (38. T. 9798)

Japanese proposal, the chief points of which were
³⁹
 these: The American views of the extent of the right
 of self-defence were explained by excerpts from an address of the Secretary of State on 24 April 1941; the section on "the attitudes of the United States and of Japan toward the European war" was redrafted; the section on "China Affairs" was redrafted with considerable alterations of the details of the proposed settlement with China; and the section on "economic activities in the Southwestern Pacific area" was to some extent amended. After some further discussions the United States presented on 31 May its draft counter-proposal⁴⁰ and oral statements explanatory thereof.⁴¹ With the presentation of this counter-proposal the differences between the parties were precisely defined.

12. A word is necessary concerning the methods of the State Department in these negotiations. "Negotiations", it is self-evident -- the discussion of a matter with a view to some settlement or compromise⁴² -- implies the existence of an issue, as to which the parties respectively advance, accept, qualify or refuse successive offers or proposals. Negotiations

(39. Ex. 1071, T. 9904-8)

(40. Ex. 1078, T. 9937-46)

(41. Exs. 1079, T. 9947-59, and 1080, T. 9960)

(42. Oxford English Dictionary (1933), vii, 81.

cannot be in the abstract -- that is the field of de-
bate, of disputation -- but must be concerned with con-
crete questions. This is platitudinous, it seems not
worth arguing or even stating; nor would it be, but
for a certain disinclination which we find manifested
here to discuss those concrete details. The witness
Ballantine (whose voice, be it remembered, is that of
the Department of State of the United States) has un-
dertaken to say that for the Japanese Government to
speak of having made concessions in these negotiations
is "a monstrous distortion of the facts."⁴³ It is
natural to assume that a witness and a State Department
making such a charge are prepared to point to the evi-
dence supporting it; in justification of such a con-
clusion relating to negotiations, one would expect to
be given the specific instances proving that no con-
cession was made on some or all of the concrete de-
tails of the negotiations. Those instances are not
to be discovered in this record.

(43. T. 10846)

1 The State Department certainly did recognize
2 the existence in the Japanese-American negotiations of
3 such specific problems -- in its ultimatum of 26
4 November 1941 it stated that the negotiations had
5 been carried on "for the purpose of arriving at a
6 settlement if possible of questions relating to the
7 entire Pacific area"⁴⁴ -- but the cross-examiner's
8 attempt to expose the basis of Mr. Ballantine's
9 conclusions (which are the State Department's) by
10 finding examples of Japanese recalcitrance on specific
11 questions met with defeat. The witness declined to
12 discuss these details which were negotiated over for
13 half a year, repeatedly taking refuge in such evasions
14 as "We didn't reach a point where all the other things
15 were so clear that we would have to reach a decision
16 on this one remaining question"⁴⁵ ; "you couldn't take
17 any one point at a time; you had to consider the whole
18 situation as a whole"⁴⁶ ; "I don't think that they
19 (we) attached too much importance to any single point
20 because we were so far apart on many of those questions
21 as a whole"⁴⁷ ; "we didn't consider each of these small
22 points individually. We considered the proposition as
23

24 44. Ex. 1245-I (Tr. at 10,816).

25 45. Tr. 10,889.

46. Tr. 10,895.

47. Tr. 10,897.

1 a whole" ⁴⁸ ; "So far as I know, none of us reached any
2 conclusion in regard to this point by itself, or any
3 other point by itself." ⁴⁹ "What is this mysterious
4 "whole", which is not equal to the sum of the parts?
5 Let us say that (as we shall see presently to have
6 been the fact) there were three issues for negotiation.
7 Of point "A" the witness says "Oh! they may have made
8 some concession on that, but they narrowed their
9 position as a whole." Inquiry concerning "B" and "C"
10 elicits the same response. It is pertinent to inquire,
11 on what does the witness base the second clause of his
12 reply?

13 An alleged Japanese refusal to make conces-
14 sions from the position with which she started negoti-
15 ations being made the cornerstone upon which the
16 prosecution would erect a structure of conspiracy,
17 chicanery and duplicity, we must investigate the
18 charge closely. The prosecution having elected to
19 rest such a large part of their case against these
20 defendants -- so far as concerns responsibility for
21 the Pacific War -- upon what is contended to be Japanese
22 insincerity in the Japanese-American negotiations,
23 insincerity which is said to give the lie to those
24

25 48. Tr. 10,927.

49. Tr. 10,928.

1 defendants' affirmation that concurrent military
2 preparations and the negotiations themselves were not
3 carried on with aggressive intent, we shall have at
4 any risk of tedium to undertake a minute study of the
5 Japanese-American negotiations. What the witness
6 Ballantine would not admit, the documentary evidence
7 introduced by prosecution and defense places, it is
8 submitted, beyond doubt: that from the Japanese side
9 came concession after concession in the endeavor to
10 find a common ground with the increasingly retro-
11 gressive American position, in order to avert a war
12 which would be as ruinous as unnecessary.

13 13. In order to make this demonstration, a
14 chronological treatment of the negotiations as a
15 whole would, it is felt, be of little value. Instead,
16 I shall attempt to isolate the points of difference
17 which provided the subject-matter of the negotiations --
18 the concrete questions in which there was or was not
19 concession -- tracing the history of them one by one
20 in order to see whether the contentions of the prosecu-
21 tion (which are those of the Department of State) have
22 validity. Having done this, I shall treat of a number
23 of other related questions in the endeavor to assist
24 the Tribunal to a complete view of the subject.
25

In stating the points in contention in the

1 Japanese-American negotiations we may disregard var-
 2 ious aspects of phraseology in the preamble and minor matters
 3 in the text of the draft proposals; the significant
 4 issues framed by the end of May were understood by the
 5 Japanese⁵⁰, and are confirmed by the Americans⁵¹, to
 6 have been three: 1) the attitudes of the respective
 7 governments toward the European war -- the Tripartite
 8 Pact question; 2) the question of Chinese-Japanese
 9 relations and the settlement of the China Affair; and
 10 3) the question of the economic activities of the two
 11 nations in the Pacific area, especially with reference
 12 to the principle of non-discrimination in international
 13 commercial intercourse⁵². At least one other of
 14 importance arose before the end, that of Indo-China.

15 THE TRIPARTITE PACT QUESTION

16 14. The issue between the two nations con-
 17 cerning their respective attitudes toward the European
 18 War was ostensibly that of the interpretation which
 19 Japan was making and would make of Article III of the
 20 Tripartite Pact, providing in part that "If and when
 21 any one of the signatories be attacked by any third
 22 power not presently engaged in the present European
 23 war, or the China Incident, the other two shall aid her

24
 25 50. Exs. 2,895 (Tr. 25,801) and 2,903 (Tr. 25,831).
 51. Testimony of Ballentine (Tr. 10,861-62).
 52. Idem. (Tr. 10,861-62).

in any way political, economic or military." ⁵³

1 America was then rapidly and irrevocably
2 becoming involved in the European War, which involve-
3 ment was regarded and was justified by her as being
4 a legitimate exercise of the right of self-defense.
5 The further involvement which was foreseen would in-
6 evitably end in an openly avowed state of war between
7 America and Germany -- brought about, in the American
8 view, as a result of America's action in self-defense.
9 The obstacle to Japanese-American understanding was
10 the American requirement that Japan should so inter-
11 pret her obligation to the Tripartite Alliance as not
12 to compel her going to war in aid of Germany in such
13 an event; the difficulty was that Japan, while readily
14 agreeing that an action of legitimate self-defense
15 by America would not call into operation the provisions
16 of the Tripartite Pact for aid to Germany, was not
17 willing to give advance agreement that any action what-
18 soever which America might choose to label self-
19 defense was in fact legitimately so. The American
20 interpretation of the right of self-defense was in
21 the Japanese view far too broad, amounting to an un-
22 justified extension of the right. As the witness
23 Ballentine put it, "There was no difference on the
24 53. Ex. 43, (Tr. 513).
25

1 point that each nation must be the judge of what
2 should constitute its own self-defense. What the
3 Japanese representatives said was that they could not,
4 in an agreement, give us a blank check and agree not
5 to attack us on our concept of self-defense."⁵⁴

6 The giving of this "blank check" was exactly
7 what was demanded by the American position. Although
8 Ballantine undertook to say that Japan refused to give
9 any commitment even after the United States had ex-
10 plained its attitude on the question of self-defense⁵⁵,
11 the record shows that the only explanation of the Amer-
12 ican attitude ever given was in effect that America
13 would do what she pleased in the name of self-defense.
14 The representatives of the Department of State re-
15 ferred the Japanese ambassadors, for a definition of
16 the American attitude, to public speeches made by the
17 President and the Secretary of State. The Secretary's
18 definition was his statement in an address of 24 April
19 1941 that "the safety of this hemisphere and of this
20 country calls for resistance wherever resistance will
21 be most effective."⁵⁶ The President, speaking a month
22 later (27 May), had filled in the details to make
23 this quite explicit:
24

25 54. Tr. 10,864-64.

55. Tr. 10,868-69.

56. Ex. 2874 (Tr. at 25,719).

"In September 1940 an agreement was completed with Great Britain for the trade of 50 destroyers for eight important off-shore bases.

"I have said on many occasions that the United States is mustering its men and its resources only for the purpose of defense -- only to repel attack. I repeat that statement now. But we must be realistic when we use the word 'attack'; we have to relate it to the lightning speed of modern warfare.

.

"First, we shall actively resist wherever necessary and with all our resources, every attempt by Hitler to extend his Nazi domination to the Western Hemisphere, or to threaten it. We shall actively resist his every attempt to gain control of the seas. We insist upon the vital importance of keeping Hitlerism away from any point in the world which could be used and would be used as a base of attack against the Americas.

.

"We in the Americas will decide for ourselves whether and when and where our American interests are attacked or our security threatened.

"We are placing our armed forces in strategic military position.

1 "We will not hesitate to use our armed forces
2 to repel attack."⁵⁷

3 America would resist wherever necessary and
4 whenever necessary, deciding the necessity for itself,
5 taking any action at any point in the world which it
6 considered to threaten American interests or security.

7 Similar explanations were made by the Secre-
8 tary and the President to the Ambassadors on various
9 occasions.

10 15. It is submitted that this clearly does
11 amount to an American demand that it be given certe
12 blanche to determine the demands of its self-defense.
13 Whether the Tripartite Pact was good or evil, no
14 nation could without complete loss of international
15 faith give the assurance demanded by the United States,
16 that the Pact's obligation of aid would not be called
17 into operation despite the taking by America of
18 action at "any point in the world" where she might
19 "decide for herself" that her security was threatened.
20 Accepting the American contention, the United States
21 might have "placed her armed forces in strategic
22 military position" on the Russo-German border, she
23 might have massed them in Sweden or in Spain, she
24 might have stationed her fleet in the North Sea or
25 57. Ex. 2,876 (Tr. 25,723-24).

1 the Baltic or based her air force in the British
 2 Isles -- or might have done all these things. Had
 3 she done so, of course she would have been attacked
 4 by Germany; yet adopting the United States' definition
 5 of the scope of the right of self-defense, Japan would
 6 have been justified in declining to carry out her
 7 obligations under the Tripartite Pact. Would she
 8 not have been delinquent in refusing her aid in such
 9 circumstances? (It will be remembered that, as we
 10 have seen elsewhere ⁵⁸, the Japanese view of the extent
 11 of the right of self-defense as it then existed under
 12 international law was correct, and the United States
 13 had, even before the commencement of these negotiations,
 14 entered into a state of war in fact against Germany.)

15 16. America, it need hardly be remarked, had
 16 never liked the Tripartite Pact; yet it would have
 17 been a paradox had the United States, a nation always
 18 foremost among the family of nations in upholding the
 19 sanctity of treaties, made the demand of Japan that
 20 she should deny the obligatory character of the Pact.
 21 Actually, the United States had always been specific
 22 that she did not insist on Japan's denouncing the Tri-
 23 partite Pact alliance, but throughout was requiring
 24 of Japan only the making of such an interpretation
 25

58. Defense Summation, Section "E", "On Some
 Questions of International Law", §14, supra. (Tr.42431)

1 of its obligation as would permit America to rest
2 easy concerning her claims of the right to act in
3 self-defense. The Japanese representatives had, more-
4 over, early made it clear that Japan could not at that
5 time repudiate the Tripartite Pact outright⁵⁹; there
6 was therefore no question of that on either side.
7 Japan's attempt throughout the negotiations was to
8 find an interpretation of the alliance obligation
9 which would be satisfactory to the United States
10 and yet would not expose her to the charge of bad
11 faith and disregard for her treaty obligations. The
12 history of this attempt can be traced in the succes-
13 sive interpretations offered by the Japanese. In the
14 first Japanese counter-proposal of 12 May it was
15 stated as follows:

16 "The Government of Japan maintains that its
17 alliance with the Axis Powers was, and is, defensive
18 and designed to prevent the nations which are not at
19 present directly affected by the European War from
20 engaging in it .

22 "The Government of Japan maintains that its
23 obligations of military assistance under the Tripartite
24 Pact between Japan, Germany and Italy will be applied
25 in accordance with the stipulation of Article 3 of
59. Memorandum, Ex. 2,881 (Tr. at 25,741).

the said Pact."⁶⁰

Against this, the American 21 June clause was:

"The Government of Japan maintains that the purpose of the Tripartite Pact was, and is, defensive and is designed to contribute to the prevention of an unprovoked extension of the European War.

"The Government of the United States maintains that its attitude toward the European hostilities is and will continue to be determined solely and exclusively by considerations of protection and self-defense; its national security and the defense thereof."⁶¹

Ballantine, asked whether from here the positions of the parties gradually drew closer, said "No."⁶²

But by 6 September the Japanese willingness to yield on this point had gone far enough that she was prepared to undertake "that the attitudes of Japan and the United States towards the European War will be decided by the concepts of protection and self-defence, and, in case the United States should participate in the European War, the interpretation and execution of the Tripartite Pact by Japan shall be independently decided."⁶³

60. Ex. 1070 (Tr. 9,895-96).

61. Ex. 1092 (Tr. at 10,008-9).

62. Tr. 10,884.

63. Tr. at 10,779.

1 Of the 6 September proposal the witness
2 Ballantine says that "these proposals were much
3 narrower than the assurances given in the statement
4 communicated to the President on August 28th."⁶⁴
5 Nevertheless, he could not avoid admitting that from
6 the language of Japan's proposal "it was clear that
7 they meant to imply that they weren't under German
8 domination and that they were an independent nation
9 and that they would reach their own decision without
10 reference to Germany."⁶⁵ When pressed to say whether
11 this proposed phraseology was not then considered by
12 the Department of State to be sufficient evidence of
13 Japan's desire to escape from the Tripartite Pact
14 without formally denouncing it, he characteristically
15 changed the subject. "At one time, I believe, the
16 Secretary of State said that the Cabinet of Japan
17 might change, and that what might go for one Cabinet
18 might not go for the next Cabinet."⁶⁶ This is
19 astonishing! Why negotiate? If, a thorough-going
20 and satisfactory interpretation (as demanded by the
21 United States) once given, it has no value because
22 it might not be regarded as binding by a subsequent
23 Cabinet, it is an utterly futile and stultifying thing
24

25 64. Tr. 10,778.
 65. Tr. 10,890.
 66. Tr. 10,891.

1 to negotiate for any agreement at all, for when
2 arrived at it might in its entirety "not go" for the
3 next Cabinet.

4 17. In proposals of 25 September Japan went
5 still further; the language now is that "with regard
6 to developments of the situation prior to the restor-
7 ation of world peace, both Governments will be guided
8 in their conduct by considerations of protection and
9 self-defense; and, in case the United States should
10 participate in the European War, Japan would decide
11 entirely independently in the matter of interpreta-
12 tion of the Tripartite Pact between Japan, Germany
13 and Italy, and would likewise determine what actions
14 might be taken by way of fulfilling the obligations in
15 accordance with the said interpretation." 67

16 Secretary Hull's reaction to these succes-
17 sive Japanese offers of interpretation was quite the
18 opposite of that professed by his subordinate, Mr.
19 Ballantine; for in an "oral statement" of 2 October,
20 reviewing the negotiations and commenting on the
21 latest Japanese proposals, the Secretary said that
22 "With reference to the attitude of each country toward
23 the European War, this Government has noted with
24 appreciation the further step taken by the Japanese
25 67. Ex. 1245-E (Tr. at 10,786-87).

1 Government to meet the difficulties inherent in this
2 aspect of the relations between the two countries.
3 It is believed that it would be helpful if the Japan-
4 ese Government could give further study to the ques-
5 tion of possible additional clarification of its
6 position."⁶⁸

7 Mr. Ballantine was entirely unable to explain
8 the contradiction between Secretary Hull's noting this
9 further step with appreciation and his own dogged
10 insistence that Japan never offered any concession
11 in this regard⁶⁹; the best that he could do was to
12 suggest that Secretary Hull's language did not mean
13 what it said, but was an attempt "to be as conciliatory
14 and friendly as possible."⁷⁰ On the other hand, the
15 interpretation placed on these Japanese proposals by
16 the American Ambassador in Tokyo, Joseph C. Grew
17 (to whom they had been communicated)⁷¹ quite accorded
18 with Mr. Hull's; Ambassador Grew felt that, "In regard
19 to Japan's Axis relations the Japanese Government,
20 though refusing consistently to give an undertaking
21 that it will overtly renounce its alliance membership,
22 actually has shown a readiness to reduce Japan's
23

24 68. Ex. 1245-G (Tr. at 10,804-5).

25 69. Tr. 10,890-93.

70. Tr. 10,892.

71. Ex. 2895 (Tr. 25,801).

1 alliance adherence to a dead letter by its indica-
2 tion of willingness to enter formally into negoti-
3 ations with the United States."⁷²
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23 72. Tr. 10,588.
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1 If Mr. Grew's analysis was correct -- and it
2 is difficult to see what other interpretation can be
3 placed on the Japanese commitment -- we again encounter
4 the paradox. The United States professes to require
5 only such an "interpretation" of the pact as will
6 enable it to feel secure; having now been offered a
7 specific commitment that Japan will reject the inter-
8 pretation of the pact contended for by Germany and
9 Italy, is she not now content? To "decide entirely
10 independently" must mean in the context that Japan
11 will make that decision which the United States
12 requires; that is, will reject the contrary interpre-
13 tation which Germany demands. It can mean nothing
14 else; for unless Japan meant this she would have clung
15 to the language of her original proposal, that the
16 obligation "will be applied in accordance with the
17 stipulation of Article 3" of the pact. This begins
18 to look very much as if, despite the assurances that
19 the United States did not expect Japan to "betray its
20 treaty commitments,"⁷³ nothing short of outright
21 repudiation of the pact was to be acceptable. This,
22 however, was by no means all that Japan had to offer
23 on the interpretation of the Tripartite Pact alliance
24 73. Dooman to USHIBA (Tr. 25,821), Hamilton to IKAWA
25 (Tr. 25,731).

obligation. The department's view of the Japanese proposal and of Mr. Grew's advice was that "there needed to be something much more definite and concrete."⁷⁴ It was soon forthcoming.

18. Ambassador NOMURA reported to the Foreign Ministry on 8 October⁷⁵ that the Americans "figure that they must be much surer of our attitude toward the three-power pact." Soon after this, the KONOE Cabinet⁷⁶ fell and (as has been fully explained by the evidence), the successor cabinet underwent considerable travail in the effort to find some new method of approach to the problem of the Japanese-American negotiations. Its labor resulted in, among other things, the production of proposal "A,"⁷⁷ which was forwarded to Ambassador NOMURA on 4 November.⁷⁸ It being then generally understood in Japan that an agreement in principle had been reached on the Tripartite-Pact question, relatively little attention had been devoted to the problem in the Liaison Conference meetings or in the drafting of proposal "A."⁷⁹ Nevertheless, conformably to the Ambassador's suggestion that clarification of the

74. Testimony of Ballantine (Tr. 10,889).

75. Ex. 1144 (Tr. at 10,238).

76. Testimony of YAMAMOTO, Kumaichi (Tr. 25,921-24) and of TOGO, Shigenori (Tr. 35,679-91).

77. Ex. 1246 (Tr. 10,918).

78. Ex. 2925 (Tr. 25,966).

79. Testimony of YAMAMOTO (Tr. 25,921-25; 25,938-47) and of TOGO (Tr. 35,682-90).

question was still needed, the instruction was given
1 that

2 "It should be further clarified that Japan has
3 no intention of making any unwarranted extension of
4 the interpretation of the right of self-defense. With
5 regard to the interpretation and application of the
6 Tripartite Pact, it should be stated that the Japanese
7 Government, as has been repeatedly explained in the
8 past, will act in accordance with its own decision,
9 and that it is believed that the understanding of the
10 American Government has already been obtained on this
11 point.⁸⁰
12

13 After presenting this proposal to the Secretary
14 of State on 7 November, Ambassador NOMURA explained it
15 to President Roosevelt at an interview on the 10th. He
16 again specifically raised the question (which Ballantine
17 denied ever having heard of) of the too-liberal American
18 interpretation of the term "self-defence",⁸¹ and sug-
19 gested that both parties give assurance that they had
20 no intention of abusing the recognized right of self-
21 defense. The Ambassador then made this interesting
22 remark: "The present circumstances under which Japan
23 is placed do not permit my government to go any further
24

25 80. Tr. 25,967.

81. Memorandum, Ex. 2927 (Tr. at 25,976).

1 to write in black and white than what is proposed in
2 the draft of September 25, which I have just quoted.
3 All I have to ask you is to 'read between the lines'
4 and to accept the formula as satisfactory." The memo-
5 randum of the conversation at this point contains the
6 note "(deleted by Ambassador NOMURA.)" Mr. Ballantine
7 was unable to give any explanation for the Ambassador's
8 deletion of his last sentence, which is the part lined
9 out in the original exhibit.⁸² Yet the explanation
10 must be obvious; that the Ambassador was giving his
11 personal view of the meaning of what he had stated
12 under instructions, but realized that he had exceeded
13 the limits of diplomatic protocol in stating it. (In
14 fact, he said as much toward the end of the interview:
15 "I am afraid I may have used today some words which a
16 trained diplomat must not use."⁸³ This matter is of
17 no importance, for the understanding of the Ambassador
18 must, it is submitted, be that of anyone considering
19 this language: that Japan had in fact given the required
20 interpretation of its obligation. Japan was in fact,
21 by its various suggested phraseologies, inviting the
22 United States to read between the lines, had in fact
23 fully manifested the intention to escape the obligation
24

25 82. Id., Tr. at 25,978.

83. Tr. 10,896.

84. Tr. at 25,982.

1 of the pact short of outright and avowed denunciation
2 of it.

3 On 15 November there was a further meeting
4 between Ambassador NOMURA and Secretary Hull, at which
5 time the Secretary again brought up the Tripartite-
6 Pact question. ⁸⁵ On this occasion the Secretary

7 "requested reassurance of the peaceful promise which
8 the Japanese Government had made on 28 August." Later
9 in the course of the conversation he repeated, in
10 answer to the inquiry of Minister WAKASUGI whether the
11 United States was requiring Japan to "secede" from
12 the pact, "that he hoped the pact of allegiance would
13 be rendered a dead letter as soon as an agreement was
14 reached between Japan and the United States." ⁸⁶ The

15 same day Ambassador KURUSU arrived in Washington, and
16 he had his first interview with Secretary Hull and
17 President Roosevelt on 17 November. ⁸⁷ In the conversa-
18 tion with the President the Tripartite-Pact question
19 again came up, and Ambassador KURUSU pointed out that
20 Japan, having treaty obligations as well as her
21 national honor to consider, dared not commit treaty
22 violations. It was not to be assumed, he said,
23

24 85. Memorandum, ex. 2934, at Tr. 26,009.

25 86. Id., at Tr. 26,012.

87. Telegram from NOMURA to TOGO, ex. 2942, Tr. 26,032.

1 "that the United States -- which has been a
2 strong advocate of observance of international commit-
3 ments -- would request Japan to violate one . . .
4 whereas Japan has stated that her action with respect
5 to the obligation to go to war under the Tripartite
6 Pact will be determined entirely independently, it
7 appears that the United States took it to mean that
8 Japan intended to stab the United States in the back
9 when she had become deeply entangled in the European
10 war. He stated that such an interpretation was
11 entirely wrong, and that clarification had been made,
12 to the effect that Japan would act independently, for
13 the purpose of dispelling an apparent misapprehension
14 on the part of the United States that Japan would,
15 under the influence of Germany, move at Germany's
16 demand. If some such broad understanding as was sug-
17 gested by the President were reached at the present
18 moment between Japan and the United States concerning
19 the Pacific problems, KURUSU went on, it would
20 naturally 'outshine' the Tripartite Pact, and American
21 apprehension over the problem of application of the
22 pact would consequently be dissipated.⁸⁸

23
24 At a meeting a few days later Secretary Hull
25 brought up Ambassador KURUSU's suggestion of "outshining"
88. Ex. 2942 (Tr. at 26,034-36, as corrected).

the Tripartite Pact, and "expressed his sympathy" with⁸⁹ it, saying that he, too, considered it a good idea.

19. Meanwhile, it had been decided in Tokyo that proposal "A" had no prospect of resulting in agreement, and the Ambassadors were therefore instructed to present proposal "B," which was done on 20 November.⁹⁰ Proposal "B," being an attempt to reach a modus vivendi, did not refer to the Tripartite-Pact question; but in sending explanations to Ambassador NOMURA concerning it, Foreign Minister TOGO authorized the Ambassadors, in explanation of the statement that "Japan would decide entirely independently" concerning its obligations under the Tripartite-Pact, to

"point out that the Empire can decide independently as to whether or not there had been an attack, without being bound to the interpretations of the other countries involved in the Tripartite Treaty. You may make it clear that there are no secret agreements in the Tripartite Treaty."⁹¹

Consequently, Ambassador KURUSU promptly called upon Secretary Hull to offer one further attempt to an interpretation of the alliance obligation

89. Telegram from NOMURA to TOGO, ex. 2943 (Tr. 26,039).
 90. Testimony of YAMAMOTO (Tr. 26,028).
 91. Telegram from TOGO to NOMURA, ex. 1180 (Tr. at 10,388).

1 satisfactory to Mr. Hull. The Ambassador handed to
2 the Secretary on 21 November a draft letter which he
3 proposed to sign "by way of attempting clarification."
4 This letter is of sufficient importance to be quoted
5 in its entirety:

6 "Washington, November 20, 1941.

7 "Mr. Secretary: Through several conversations
8 I have had the honor of holding with Your Excellency,
9 I was rather surprised to learn that a deep-seated
10 misconception prevails among your people about the
11 obligation which Japan assumed under the Tripartite
12 Pact.

13 "As Your Excellency is fully aware I am the
14 one who signed the said treaty under the instructions
15 of my government; and I am very happy to make the
16 following statement which I trust will serve to era-
17 dicate the aforesaid false impression:

18 "It goes without saying that this treaty can
19 not and does not infringe, in any way, upon the
20 sovereign right of Japan as an independent state.

21 "Besides, as Article III of the pact stands,
22 Japan is in a position to interpret its obligation
23 freely and independently and is not to be bound by
24 the interpretation which the other, high contracting
25 92. Memorandum, ex. 2945 (Tr. 26,045).

parties may make of it. I should like to add that my government is not obligated by the aforementioned treaty or any other international engagement to become a collaborator or cooperator in any aggression whatever by any third power or powers.

"My government would never project the people of Japan into war at the behest of any foreign power: it will accept warfare only as the ultimate, inescapable necessity for the maintenance of its security and the preservation of national life against active injustice.

"I hope that the above statement will assist you in removing entirely the popular suspicion which Your Excellency has repeatedly referred to. I have to add that, when a complete understanding is reached between us, Your Excellency may feel perfectly free to publish the present communication.

"I have the honor, etc."⁹³

The clarification here proposed might seem to a disinterested observer to be a complete compliance with the United States demands. It is difficult to see how, short of an outright repudiation of the Tripartite Pact, Japan could go beyond the language here proposed. Japan would interpret its obligation "freely and independently," not being bound "by the 93. Memorandum, ex. 2945 (Tr. at 26,046-47).

~~interpretation which the other high contracting parties"~~

1 might make. Moreover -- this is the really significant
2 language, in view of the repeated American insistence
3 on such statements of principle -- Japan was "not
4 obligated by the aforementioned treaty or any other
5 international engagement to become a collaborator or
6 cooperator in any aggression whatever by any third
7 power or powers." This, it is submitted, is as much
8 as to say that Japan tacitly accepted the American view
9 of the defensive character of its increasing involve-
10 ment in the European war, and was willing to undertake
11 that that involvement would not be made the pretext for
12 an attack by Japan. Finally, if this were not enough,
13 there is the authorization to publish the letter upon
14 conclusion of the Japanese-American understanding. It
15 requires little imagination to conceive what would
16 have remained of the Tripartite Alliance once the news
17 of this publication reached the chancelleries of
18 Wilhelmstrasse and Palazzo Chigi.

20 20. Secretary Hull's reaction was quite
21 different -- was, considering the importance which he
22 had theretofore attached to this question, rather
23 inexplicable. We have it in his own words:

24 "I looked at the paper and then asked Mr. KURUSU
25 whether he had anything more on the whole subject of a

1 peaceful settlement to offer. He replied that he did
2 not. I said that I did not think this would be of any
3 particular help and so dismissed it."⁹⁴

4 Bearing in mind that the United States was
5 demanding of Japan not abrogation of the Tripartite
6 Pact but only such an interpretation of it as should
7 be satisfactory to the United States, it is difficult
8 to conceive what "would be of any particular help" if
9 this proposal was not. Perhaps this was one of those
10 occasions when the Secretary was afraid that "what
11 might go for" the current cabinet might not "go for
12 the next cabinet." By this time of course, as Ballan-
13 tine so volubly explains, the State Department thought
14 that it knew Japan to be entirely insincere in the
15 negotiations, and therefore had no confidence in any
16 undertakings which she might give -- or, to use the
17 phrase which he applies to the Japanese conduct, was
18 only "keeping up the appearance of continuing nego-
19 tiations."⁹⁵ Which suggests questions which we shall
20 come to somewhat later. On this evidence the Tribunal
21 can assay the opinion of Ballantine that there was no
22 feeling in the State Department by November that the
23 parties were measurably near to agreement on the
24

25 94. Id. (Tr. at 26,045).

95. Tr. 10,961.

96
Tripartite-Pact question. The United States had
1 desired the Government of Japan to declare "that it is
2 under no commitment to the Axis Alliance or otherwise
3 which is inconsistent with the terms of" the proposed
4 Japanese-American agreement;⁹⁷ the Tribunal can judge
5 whether the Government of Japan did not time and again
6 so declare to the satisfaction of any reasonable require-
7 ment.
8

9 There seems to have been no further discussion
10 of the Tripartite-Pact question.⁹⁸ Within a few days
11 after the meeting last mentioned, Secretary Hull,
12 having come to the decision to "break it off" handed
13 to the Japanese representatives his note of 26 Novem-
14 ber,⁹⁹ which was the last document or proposal. This
15 note contains the statement that "it is believed that
16 in our discussions some progress has been made in
17 reference to the general principles which constitute
18 the basis of a peaceful settlement covering the entire
19 Pacific area."¹⁰⁰ This "general principles" seems not
20 to relate to any of the concrete matters which had for
21

22 96. Tr. 10,896.

23 97. American proposal of 16 May, ex. 1071 (Tr. at 9905).

24 98. The State Department however knew additionally,
25 from intercepting Foreign Minister TOGO's telegram of
20 November to Ambassador NOMURA (ex. 1180, Tr. at
10,388) that the Ambassador would also give assurance
that there was no secret agreement attached to the
Tripartite Pact.

99. Ex. 1245-I, (Tr. 10,815).

100. Tr. at 10,816.

1 six months been the subject of almost daily discussions,
2 but rather to refer to the so-called "Four Principles."
3 Secretary Hull had mentioned the "Four Principles" as
4 being his conception of the necessary basis for an
5 agreement, on 16 April, when he first brought up the
6 matter of the original private draft of agreement,¹⁰¹
7 and they had been occasionally referred to thereafter.
8 It may be convenient at this point to digress moment-
9 arily and consider the matter of the "Four Principles."

10 "THE FOUR PRINCIPLES."

11 21. At the interview of 16 April just
12 referred to, Secretary Hull told Ambassador NOMURA

13 ". . . that the one paramount preliminary
14 question about which my government is concerned is a
15 definite assurance in advance that the Japanese Govern-
16 ment has the willingness and ability to go forward with
17 a plan along the lines of the document we have referred
18 to and the points brought up in our conversation in
19 relation to the problems of a settlement."¹⁰²
20

21 After thus suggesting, however, that the
22 points treated of in the original draft (the same
23 points which served as the basis for all later drafts)
24 should be those for negotiation, the Secretary then
25 added that his government wished the assurance also of

101. Memorandum, ex. 1061 (at Tr. 9867).

102. Id., Tr. at 9867.

Japan's willingness "to adopt the principles which
1 this government has been proclaiming and practicing as
2 embodying the foundation on which all relations between
3 nations should properly rest."¹⁰³

4 He then handed to Ambassador NOMURA a sheet
5 of paper on which he had written the following four
6 points:

7 "1. Respect for the territorial integrity
8 and the sovereignty of each and all nations.
9

10 "2. Support of the principle of non-
11 interference in the internal affairs of other countries.

12 "3. Support of the principle of equality,
13 including equality of commercial opportunity.

14 "4. Non-disturbance of the status quo in
15 the Pacific except as the status quo may be altered
16 by peaceful means."¹⁰⁴

17 Although at the outset of the negotiations
18 Mr. Hull had thus stated as coordinates both the
19 particular -- the specific questions upon which he
20 understood that negotiations were to proceed -- and the
21 general -- the principles which he said his government
22 felt should embody the foundation of relations between
23 nations -- it gradually became apparent as negotiations
24 progressed that these "Four Principles" not only
25

103. Ibid.

104. Id., Tr. at 9867-68.

1 represented the expression of that high idealism which
2 Americans have always been proud to feel have inspired
3 their national policy, but also were symptomatic of a
4 doctrinarianism which was to exercise a baleful
5 influence throughout. It is submitted that no one could
6 expect, practically, that negotiations would be con-
7 ducted on the subject of, for example, "the principle
8 of non-interference in the internal affairs of other
9 countries"; the principle having been stated and
10 accepted as a principle, it remains to reach an under-
11 standing by negotiation on what constitutes such non-
12 interference. Does not the historical background
13 alone of large numbers of Japanese troops at that
14 moment in China, of the past with American troops in
15 Mexico, in Nicaragua, in Haiti, of The Boxer Powers'
16 troops in China, of American and Japanese troops in
17 the Maritime Province of Siberia, suggest the need of
18 some definition of the principle? To agree on such a
19 definition was the purpose of negotiations; Secretary
20 Hull himself never suggested that respect for this
21 principle implied the immediate and unconditional
22 withdrawal of all Japanese troops from territory of
23 other countries. Yet at crucial moments of negotiating
24 such details these "Four Principles" had a way of
25 suddenly arising to disturb the course of discussions

on practical matters and divert it into doctrinarian bypaths.

22. Ambassador NOMURA had on 8 May reported to Foreign Minister MATSUOKA the United States' "Four Principles" and her insistence thereupon.¹⁰⁵

But the Ambassador at the same time said that he had proposed to the Secretary "not to become engrossed in disputes on abstract principles," but "to meet the actual situation of Japanese-American relations properly, confining to the minimum disputes on principles and view of the world which the two nations embraced."¹⁰⁶

For a time the American authorities adopted this practical view of the matter, and did devote themselves to businesslike discussion of the means of arriving at a settlement. From the summer, however, the "Four Principles" began to crop up again and tended to be injected into the discussions whenever the parties could not see eye to eye on the method of settling some particular problem. By September this tendency to seek refuge in generalities had come to exercise such a discouraging influence on the negotiations that the Premier of Japan, Prince KONOE, took the extraordinary way of arranging for a

105. Ex. 2872 (Tr. at 25,709).
106. Tr. at 25,710.

1 private dinner with Ambassador Grew, as an oppor-
2 tunity for a long and frank conversation in an effort
3 to dispose of this question.^{107.} At the meeting on
4 6 September, Prince KONOYE (saying that he hoped that
5 his views would be transmitted personally to President
6 Roosevelt, perhaps to contribute to the success of
7 negotiations) at the outset stated that he, "and
8 consequently the Government of Japan, conclusively
9 and wholeheartedly agree with the four principles
10 enunciated by the Secretary of State as a basis for
11 the rehabilitation of relations between the United
12 States and Japan."^{108.} He then continued to discuss
13 various aspects of the negotiations as exemplifying
14 the practical application of the principles. This
15 should have disposed of the "Four Principles" and
16 left the field open for continued attempts at settle-
17 ment of the details by agreements which would implement
18 them. Apparently, however, the American side seized
19 upon this assurance as an opportunity for metaphysical
20 discussion: Secretary Hull's elaborate oral statement
21 of 2 October again recites the four principles in
22 extenso, and on 13 September already we find Foreign
23 Minister TOYODA saying to his ambassador that while
24
25 107. Ambassador Grew's report, exhibit 2836(T.25368-73).
108. T. 25369.

1 he still understands "that the United States wants
2 us to acknowledge her so-called four fundamental
3 principles," ¹⁰⁹ it would be more to the point to get
4 the discussion onto the level of the details in the
5 pending draft proposals.

6 Unfortunately, the United States authorities
7 were never willing to accept this view, but to the
8 end of negotiations reiterated their implied insis-
9 tence, culminating in the language above quoted from
10 the 26 November note, that debate on principles could
11 solve the pending problems between the nations. It
12 is submitted that this attitude was not unfairly
13 described in the final Japanese note in the following
14 language:
15

16 "On the other hand, the American Government,
17 always holding fast to theories in disregard of
18 realities, and refusing to yield an inch on its
19 impractical principles, caused undue delay in the
20 negotiations. . . . The American Government advocates
21 in the name of world peace these principles favorable
22 to it and urges upon the Japanese Government the
23 acceptance thereof. The peace of the world may be
24 brought about only by discovering a mutually acceptable
25 formula through recognition of the reality of the

1 situation and mutual appreciation of one another's
2 position. An attitude such as ignores realities and
3 imposes one's selfish views upon others will scarcely
4 serve the purpose of facilitating the consumption of
5 110.
6 negotiations."

7 ECONOMIC ACTIVITIES

8 23. Of the three chief problems forming the
9 subject matter of the Japanese-American negotiations,
10 another was brought by repeated Japanese concessions
11 to the point where it can fairly be said that agree-
12 ment should have resulted. This is the question of
13 the economic activities of the two nations in the
14 Pacific area, and nondiscrimination in international
15 commercial intercourse. The original Japanese position
16 on this point, as stated in the draft proposal of
17 12 May, was this:

18 "V. Economic Activity of Both Nations in
19 the Southeastern Pacific Area.

20 "Having in view that the Japanese expansion
21 in the direction of the Southwestern Pacific area is
22 declared to be of peaceful nature, American coopera-
23 tion shall be given in the production and procurement
24 of natural resources (such as oil, rubber, tin, nickel)
25 110. Exhibit 1245-X (T. at 10837-38).

111.
which Japan needs."

1 On 16 May, at the meeting between Secretary
2 Hull and Ambassador NOMURA, this and other points were
3 discussed. The Secretary at that time produced a re-
4 draft of the clause touching on this question, in the
5 following language:
6

7 "On the pledged basis of guarantee that
8 Japanese activity and American activity in the
9 Southwestern Pacific area shall be carried on by peace-
10 ful means, the Japanese Government and the Government
11 of the United States agree to cooperate each with the
12 other toward ensuring on the basis of equality of
13 opportunity equal access by Japan and by the United
14 States to supplies of natural resources (such as oil,
15 rubber, tin, nickel) which each country needs for the
16 safeguarding and development of its own economy."
17

18 In discussing which redraft, the Secretary
19 "expressed the hope that subsequently other countries
20 could be brought in. He alluded in this connection to
21 the fact that the benefits of our trade program in
22 South America are enjoyed by all nations."
23 On
24 31 May Ambassador NOMURA was handed a complete redraft
of the proposed agreement. The clause on economic

25 111. Exhibit 1070 (T. at 9897).

112. Exhibit 1071 (T. at 9906-7).

113. Exhibit 2873 (T. at 25715).

1 activity was then slightly altered, appearing in the
2 following form:

3 "On the basis of mutual pledges hereby
4 given that Japanese activity and American activity
5 in the Pacific area shall be carried on by peaceful
6 means and in conformity with the principle of non-
7 discrimination in international commercial relations,
8 the Japanese Government and the Government of the
9 United States agree to cooperate each with the other
10 toward obtaining nondiscriminatory access by Japan
11 and by the United States to commercial supplies of
12 natural resources (such as oil, rubber, tin, nickel)
13 which each country needs for the safeguarding and
14 development of its own economy." ^{114.}

15 An oral statement accompanying the draft
16 pointed out that the section had "been rephrased to
17 make the provisions thereof applicable equally to
18 the United States and Japan." ^{115.} As it proved later,
19 however, the significant alteration was the substitu-
20 tion of the word "Pacific" for "Southwestern Pacific."
21 Conversations were held on the basis of this last
22 proposal, and on 4 June the Japanese representatives
23 offered still another formula for this clause. Their
24 114. Exhibit 1078 (T. at 9943-44).
25 115. Exhibit 1079 (T. at 9951).

1 proposal was in the following language:

2 "Noting that Japanese expansion in the
3 direction of the Southwestern Pacific area is de-
4 clared to be of peaceful nature, American cooperation
5 and support shall be given in the production and pro-
6 curement of natural resources (such as oil, rubber,
7 tin, nickel) which Japan needs."^{116.}

8 In explanation of continuing to limit the
9 application of the clause to the Southwestern Pacific
10 area, whereas Secretary Hull's proposal had on 31
11 May been changed to extend it to the Pacific at large,
12 it was said that it was in view of the special interest
13 of Japan in that area that it was felt that this sec-
14 tion should be made to relate to it specifically.

15 24. On 15 June the Japanese side again
16 presented a complete redraft of the agreement.^{117.} The
17 clause which we are here interested in represents
18 a compromise between the earlier American and Japanese
19 positions; the wording "Pacific" is accepted, as well
20 as the Americans' "mutual pledges," which had been
21 the subject of some little discussion.^{118.}

22 "On the basis of mutual pledges hereby given
23 that Japanese activity and American activity in the
24

25 116. Memorandum, Ex. 1083 (T. 9974).

117. Ex. 1087 (T. 9988-95).

118. Memorandum, Ex. 1083 (T. 9974-76).

1 Pacific area shall be carried on by peaceful means
2 and in conformity with the principle of nondiscrimi-
3 nation in international commercial relations, the
4 Japanese Government and the Government of the United
5 States agree to cooperate each with the other toward
6 obtaining nondiscriminatory access by Japan and by
7 the United States to commercial supplies of natural
8 resources (such as oil, rubber, tin, nickel) which
9 each country needs for the safeguarding and develop-
10 ment of its own economy." 119.

11 This time the State Department responded
12 with what was to be the last proposal made by it in the
13 negotiations, that of 21 June. 120. It is interesting
14 to note that with this proposal the differences be-
15 tween the parties concerning economic activities
16 ceased to exist, for Section V of the 21 June draft
17 is in the identical language of the Japanese 15 June
18 draft. 121. The Japanese had there made the concession
19 of accepting the two major demands in this branch of
20 the negotiations, and if Ballantine's sweeping general-
21 izations concerning Japan's making no concessions are
22 to be related to this point, we can only say that it
23 is monstrous for him to make such an assertion.
24

25 119. T. at 9993.
120. Exhibit 1092(T. 10005-19).
121. T. at 10011.

Thereafter the negotiations were suspended,
 1 being resumed in August. The next event in the
 2 chronicle of the economic-activities question was the
 3 fresh proposals which Ambassador NOMURA was directed
 4 on 5 August to transmit to the United States, they
 5 being intended as a resumption of the negotiations
 6 at the point where they were interrupted in July.^{122.}

This proposal, duly handed to Secretary Hull on the
 8 6th,^{123.} contained the following proposal additional
 9 to that already made and agreed upon, and to be in-
 10 corporated into it ("it will promptly be taken into
 11 the framework of adjustment of diplomatic relations."^{124.}):

13 ". . . that, in order to remove such causes
 14 as might be responsible for the instability of the
 15 economic relations between Japan and the United States
 16 in East Asia, the Japanese Government will cooperate
 17 with the Government of the United States in the pro-
 18 duction and procurement of such natural resources as
 19 are required by the United States."^{125.}

20 Secretary Hull, as reported by Ambassador
 21 NOMURA, showed little interest in the proposal.^{126.}

22 Thereafter, Ambassador NOMURA considered

23
 24 122. Ex. 2884 (T. at 25759).
 25 123. Ex. 2886 (T. 25765).
 124. T. at 25761.
 125. T. at 25762.
 126. Telegram from NOMURA to TOYODA, Ex. 2886 (T.25765).

1 agreement to have been reached on this question -- as
2 obviously it had been with the presentation of the
3 American proposal of 21 June. The Ambassador on
4 3 September, in fact, stated that understanding of
5 his to President Roosevelt and Secretary Hull, neither
6 of whom dissented from it or had any comment to offer
7 on the matter: "As to the three pending issues, I
8 said that an agreement in principle had been reached
9 so far as two of them were concerned."^{127.}

10 25. On 6 September, negotiations not having
11 progressed, a further Japanese proposal was . . .^{128.}
12 presented. This is not a complete redraft of the
13 understanding, but relates to certain points only,
14 the part concerning economic activities being con-
15 tained in two separate clauses:

16 "(f) that Japan's activities in the South-
17 western Pacific Area will be carried on by peaceful
18 means and in accordance with the principle of non-
19 discrimination in international commerce, and that
20 Japan will cooperate in the production and procure-
21 ment by the United States of natural resources in the
22 said area which it needs.
23

24

25 127. Telegram from NOMURA to TOYODA, Ex.2894(T.25799).
128. Ex. 1245-D (T. 10778).

"(b) that the United States will reciprocate Japan's commitment in point (f) referred to above."^{129.}

Why the return was made (to Secretary Hull's natural disappointment)^{130.} to the phraseology "Southwestern Pacific Area" is not explained unless by the Secretary's earlier failure to manifest interest in the Japanese acceptance of his proposal extending it to the Pacific area. This is unimportant, however, for as will be seen presently, the Japanese eventually again accepted all American suggestions in this matter. The Japanese redraft proposal of 25 September is somewhat new in form, and still retains the limitation to the Southwestern Pacific area.

"Both governments mutually pledge themselves that the economic activities of Japan and the United States in the Southwestern Pacific area shall be carried on by peaceful means and in conformity with the principle of nondiscrimination in the international commercial relations in pursuance of the policy stated in the preceding paragraph, both governments agree to cooperate each with the other towards the creation of conditions of international trade and international investment under which both countries will have a

¹²⁹: Exhibit 1245-D (T. 10779-80.)
¹³⁰: Exhibit 1245-G (T. at 10802-3).

1 reasonable opportunity to secure through the trade pro-
2 cess the means of acquiring those goods and commodi-
3 ties which each country needs for the safeguarding and
4 development of its own economy.

5 "Both governments will amicably cooperate for
6 the conclusion and execution of agreements with the
7 powers concerned in regard to the production and supply,
8 on the basis of nondiscrimination, of such specific
9 commodities as oil, rubber, nickel, and tin."^{131.}

10 Thereafter, Ambassador NOMURA was still report-
11 ing the economic question to the Foreign Minister, on
12 3 October, as having "already been nearly settled."^{132.}
13 However, he notes also the language of Secretary Hull
14 which was the occasion of resumed debates on the matter,
15 resulting in Japanese acceptance of still further
16 modifications of the proposed agreement on this point,
17 "Mr. Hull abides by the principle of free trade and
18 regards bloc economy as a cause of war. He is now
19 trying to make this principle prevail in regard to the
20 United Kingdom also."^{133.}

21 There seems to have been no further development
22 in the matter of economic activities until the KONOYE
23 Cabinet having been replaced by the TOJO, Proposal "A"
24

25 131. Ex. 1245-E (T. at 10789-90).

132. Ex. 2906 (T. 29845).

133. Ibid.

1 was agreed upon for submission to the United States.
2 Proposal "A" was not actually a completely redrafted
3 proposal; rather, it consisted of modification to be
4 made in the proposal of 25 September. The provision
5 on economic activities therefore appears in Proposal
6 "A" in the form of the following sentence, to be
7 included in a revision of Section V of the pending
8 draft:

9 "Principle of Nondiscrimination."

10 "The Japanese Government recognizes the
11 principle of nondiscrimination in international com-
12 mercial relations to be applied to all the Pacific
13 areas, inclusive of China, on the understanding that
14 the principle in question is to be applied uniformly
15 to the rest of the entire world as well."^{134.}

16 This provision seems to represent a complete
17 acceptance of the American position on this question;
18 the point agreed on 21 June is retained, with an
19 addition to incorporate Secretary Hull's desire, often
20 expressed in these negotiations, of making the principle
21 universal in application. As the Foreign Minister
22 explained in forwarding the proposal to his Ambassador,
23 it was supposed that this clause would be entirely
24 satisfactory inasmuch as on the one hand it represented
25 134. Ex. 1246 (T. 10920).

1 a total abandonment of the long-standing Japanese
2 insistence on recognition of special Japanese rights
3 in China growing out of geographical propinquity; and
4 on the other hand, in suggesting the extension of
5 the principle of nondiscrimination to the whole world,
6 it represented merely an application of the United
7 States' own suggestion that "it would be undesirable
8 if either the United States or Japan were to pursue
9 one course of policy in certain areas while at the
10 same time pursuing an opposite course in other areas."^{135.}

11 26. Summing up the course of the negotiations
12 on this question of economic activities, the witness
13 Ballantine says that "some of the wordings" suggested
14 by the American side "were embodied, but they were
15 largely, in effect, nullified by the various quali-
16 fications the Japanese put in."^{136.}

17 The embodiment
18 of the wordings is readily apparent, but one searches
19 in vain for qualifications imposed or suggested by
20 Japan. Ballantine's position, however, seems to have
21 been that this addition in Proposal "A" of the words
22 "on the understanding that the principle in question
23 is to be applied uniformly to the rest of the entire

24 135. Telegram from TOGO to NOMURA, Exhibit 2925
25 (T. at 25968-9).

136. T. 20939.

world as well" constitutes a "qualification" which

1 nullifies the acceptance of the American proposal.

2 The basis for this position of his was entirely

3 destroyed by cross-examination. He was ~~compelled~~

4 to admit that, as Ambassador NOMURA had pointed out

5 to President Roosevelt,^{137.} the application of the

6 principle throughout the whole world was along-

7 cherished scheme of Mr. Hull's -- "that was a con-

8 sistent position of the Secretary of State."^{138.} It

9 would seem that, Secretary Hull's consistently-

10 advocated position being accepted by Japan, the

11 Secretary could have recognized that a meeting of the

12 minds had occurred on this point. This was in fact

13 exactly his immediate reaction upon receipt of

14 Proposal "A": Ambassador NOMURA reported that "after

15 careful reading, Hull concurred in the clause re-

16 specting nondiscrimination in trade and revealed his

17 opinion that its adoption would prove beneficial also

18 to Japan."^{139.}

19
20 However, the mood passed, and the Secretary

21 handed to Ambassador NOMURA on 15 November an oral

22 statement in which he pointed out "that the last sen-

23 tence of the Japanese proposal" -- the sentence here

24
25 137. Memorandum, Ex. 2927 (T. 25974).

138. T. 10941.

139. Ex. 2928 (T. at 25989).

under consideration -- "sets forth a condition the
1 meaning of which is not entirely clear."^{140.} In what
2 respect it lacked clarity seems to have been suggested
3 by the Secretary in his next words: That the principle,
4 he assume, was not meant to bind the United States to
5 responsibility for practices outside of its jurisdic-
6 tion, or practices by other nations.^{141.} This was
7 on 15 November. The correctness of Mr. Hull's
8 assumption just quoted had already, two days earlier,
9 been confirmed by Japanese Minister WAKASUGI, in a
10 conversation with this same Ballantine;" 'Mr. WAKA-
11 SUGI said that what the Japanese Government meant'
12 by this phrase in question 'was that the principle
13 would be applied by the United States and by Japan,
14 and did not refer to the universal application of
15 those principles by all countries. Mr. Ballantine
16 asked whether this was not a very important point to
17 be brought out clearly and authoritatively."^{142.}
18 Ballantine, the negotiator, was more accurate than
19 Ballantine the witness: The point was "very important,"
20 for it meant that for the second time Japan's ac-
21 ceptance of the American position had brought the
22 parties to the place where agreement had to be
23

24
25 140. Ibid.

141. T. 10942.

142. Ibid.

1 recognized. The net result of this little passage
2 is clearly, it is submitted, that Mr. Hull's long-
3 cherished principle was given complete acceptance
4 by Japan, who agreed that it should be applied to
5 the world at large. Mr. Hull welcomed the conces-
6 sion ("concurred in the clause"): but out of an
7 abundance of caution his assistants requested from
8 the Japanese confirmation -- which was unhesitatingly
9 given -- that it was intended by the proviso only
10 to bind the United States and Japan, not other coun-
11 tries under the control of neither. This confirma-
12 tion seems to have been well understood by Mr. Hull,
13 as is shown by his assuming that fact in his conver-
14 sation with the Ambassador on the 15th.

15 THE PRESIDENT: We will recess for fifteen
16 minutes.

17 (Whereupon, at 1445, a recess was
18 taken until 1500, after which the proceedings
19 were resumed as follows:)
20
21
22
23
24
25

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: On page 60, Section 27:

5 The prosecution's contention that this
6 proviso "was at the time well known to be impossible
7 of fulfillment"¹⁴³ is thus wide of the mark, for on
8 Mr. Hull's correct assumption of its scope it was
9 readily susceptible of being put into practice. When
10 it was put to the witness Ballantine that with these
11 discussions there had been a meeting of the minds on
12 this point, he evaded answering, giving the unresponsive
13 reply that

14 The fact of the matter is we never got a
15 reply to our memorandum of November 15, and KURUSU, on
16 November 18, made statements to the Secretary which
17 threw doubt on how far the Japanese Government could
18 ever go in the matter¹⁴⁴.

19 He was then asked, "Will you tell us as well
20 as you are able to remember what those statements of
21 Mr. KURUSU were?" To this he gave it as his recollection
22 that KURUSU mentioned exchange controls in China and
23 his inability to promise what Japan could do after the
24

25 143. Summation, Sections G-120 (T. 39,660).

144. T. 10,943.

1 war, but added that he was not sure of his memory and
2 referred the cross-examiner to the record ^{145.} It
3 was seemingly with good reason that he distrusted his
4 memory; for no such record has been produced. Had
5 it been, we might reasonably expect to find that in
6 the light of it Mr. Ballantine's statement of the
7 effect of KURUSU's language would be subject to the
8 qualifications with which one must usually accept his
9 conclusions. At any rate, there is nothing in the
10 evidence to prove any such statement of KURUSU's, nor
11 do we find in the evidence any memorandum of 15
12 November bearing on this point, unless by "memorandum"
13 is meant the oral statement, which so far as appears
14 in no way requires an answer. What we do find in the
15 evidence, however, is Ambassador NOMURA's report to
16 the Foreign Minister of his conversation with Mr. Hull
17 of that day. ¹⁴⁶ The Secretary of State at that time
18 used this curious language: "Hull said that the earnest
19 efforts on the part of the United States have ripened
20 into the present proposal concerning the problem of
21 commerce" ¹⁴⁷. This does not sound as if the proposal
22 was "unclear", as the oral statement suggested, but
23 rather as if it was perfectly understood and cordially
24

25 145. Ibid.

146. Exhibit 2934 (T. 26,006).

147. Ibid.

1 welcomed. (The obvious explanation of this discrepancy
2 is that the oral statement had been prepared before
3 the Ballantine-WAKASUGI talk of the 13th, and was
4 delivered without alteration.) Secretary Hull went
5 on to point out that the United States had concluded
6 commercial treaties with twenty-two nations, greatly
7 advancing its policy of most-favored-nation treatment
8 and thereby removing obstacles to the commerce of the
9 world; and, "he declared that it is the policy of the
10 United States to apply generally the principles of
11 non-discrimination in commercial relations"¹⁴⁸. He
12 then repeated that he hoped that Japan would withdraw
13 her proposal to apply that principle to the entire
14 Pacific area on condition of its application to the
15 rest of the world--not on the ground that it was unclear,
16 not as contradictory to the American position, but
17 "inasmuch as it would not be necessary in the light
18 of the above-mentioned American policy, and as the
19 United States cannot commit itself to anything which
20 concerns countries outside the jurisdiction of the
21 United States"¹⁴⁹. Certainly the proposal was "un
22 necessary", just because it coincided exactly with the
23 American position; no one suggested, after Minister
24

25 148. Id. (T. 26,007).

149. Ibid.

1 WAKASUGI's clarification, that it was improper, or
2 unacceptable, or "narrow". Mr. Hull, in saying that
3 the United States could not commit itself to anything
4 which concerns countries" outside its jurisdiction,
5 could not seriously have believed -- even if WAKASUGI
6 had not specifically said that the principle would be
7 applied by the United States and by Japan -- that the
8 Japanese proposal meant that Japan and the United
9 States, or either of them, was to assume responsibility
10 for the commercial policies of Britain, Germany, Nepal
11 or Liberia, or of any nations but the United States
12 and Japan. It was quite understood that the parties
13 were contracting for themselves, not for the world
14 at large. The "present proposal concerning the problem
15 of commerce" which Hull said represented the ripening
16 of the earnest American efforts was, of course,
17 Proposal "A", the one then current and then under
18 discussion. One can but wonder at the meaning of the
19 Secretary's insistence that Japan, in going so far
20 to meet him as to adopt unqualifiedly the principle
21 with which his name was identified throughout the world,
22 had made the situation unclear or had in short done
23 anything but concede the entire question.

24 THE CHINA QUESTION

25 28. We turn now to the third, and by far

1 the most important, of the main issues between the
2 United States and Japan. This is the question of
3 Chinese-Japanese relations, a question which, however,
4 in practice came down to the matter of the stationing
5 of Japanese troops in China and their withdrawal
6 therefrom. Conformably with the complexities of the
7 China Affair itself, this question proved to be one
8 of exceeding intricacy and difficulty; it consumed
9 much the greater part of the time and thought of the
10 negotiators; it brought about the downfall of a govern-
11 ment in Japan; and it was finally to be the rock upon
12 which were wrecked the Japanese-American negotiations
13 and the hopes for averting a war in the Pacific.

14 The first Japanese proposal, that of 12 May,
15 contained this very brief provision relative to the
16 China Affair:

17 "III. The relations of both nations toward
18 the China Affair.

19 "The Government of the United States, acknow-
20 ledging the three principles as enunciated in the KONOYE
21 Statement and the principles set forth on the basis
22 of the said three principles in the treaty with the
23 Nanking Government as well as in the Joint Declaration
24 of Japan, Manchukuo and China and relying upon the
25 policy of the Japanese Government to establish a

relationship of neighborly friendship with China, shall
1 forthwith request the Chiang Kai-shek regime to negotiate
2 ¹⁵⁰
peace with Japan" .

3 The "Annex" contained the following "oral
4 explanation" in connection with this section:

5 "The terms for China-Japan peace as proposed
6 in the original Understanding differ in no substantial
7 way from those herein affirmed as the "principles of
8 KONOYE". Practically, the one can be used to explain
9 the other.

10 "We should obtain an understanding, in a
11 separate and secret document, that the United States
12 would discontinue her assistance to the Chiang Kai-shek
13 regime if Chiang Kai-shek does not accept the advice
14 of the United States that he enter into negotiations
15 for peace.

16 "If, for any reason, the United States finds
17 it impossible to sign such a document, a definite
18 pledge by some highest authorities will suffice."

19 The three principles of Prince KONOYE as
20 referred to in this paragraph are:

21 "1. Neighborly friendship;

22 "2. Joint defense against communism;

23 150. Exhibit 1070 (T. at 9,896).
24
25

1 "3. Economic cooperation -- by which Japan
2 does not intend to exercise economic monopoly in
3 China nor to demand of China a limitation in the
4 interests of Third Powers."

5 The following are implied in the aforesaid
6 principles:

7 "1. Mutual respect of sovereignty and
8 territories;

9 "2. Mutual respect for the inherent char-
10 acteristics of each nation cooperating as good neighbors
11 and forming a Far Eastern nucleus contributing to
12 world peace;

13 "3. Withdrawal of Japanese troops from
14 Chinese territory in accordance with an agreement to
15 be concluded between Japan and China;

16 "4. No annexation, no indemnities;

17 "5. Independence of Manchoukuo"¹⁵¹.

18 As has been suggested, a few only of these
19 points proved of notable difficulty. A comparison
20 with the succeeding American draft, that of 21 June,
21 will enable us to isolate the points of difference.
22 The equivalent section of the American proposal and
23 annex are respectively as follows:
24

25 "III. Action toward a peaceful settlement

151. Exhibit 1070 (T. at 9,899).

between China and Japan.

1 "The Japanese Government having communicated
2 to the Government of the United States the general
3 terms within the framework of which the Japanese
4 Government will propose the negotiation of a peaceful
5 settlement with the Chinese Government, which terms are
6 declared by the Japanese Government to be in harmony
7 with the KONOYE principles regarding neighborly
8 friendship and mutual respect of sovereignty and
9 territories and with the practical application of
10 these principles, the President of the United States
11 will suggest to the Government of China that the
12 Government of China and the Government of Japan enter
13 into a negotiation on a basis mutually advantageous
14 and acceptable for a termination of hostilities and
15 resumption of peaceful relations.
16

17 "NOTE (The foregoing draft of Section III
18 is subject to further discussion of the question of
19 cooperative defense against communistic activities,
20 including the stationing of Japanese troops in Chinese
21 territory, and the question of economic cooperation
22 between China and Japan. With regard to suggestions
23 that the language of Section III be changed, it is
24 believed that consideration of any suggested change
25 can most advantageously be given after all the points

1 in the annex relating to this section have been
2 satisfactorily worked out, when the section and its
3 annex can be viewed as a whole.)¹⁵²

4 "Annex:

5 "The basic terms as referred to in the above
6 section are as follows:

7 "1. Neighborly friendship.

8 "2. (Cooperative defense against injurious
9 communistic activities -- including the stationing of
10 Japanese troops in Chinese territory.) Subject to
11 further discussion.

12 "3. (Economic cooperation.) Subject to
13 agreement on a exchange of letters in regard to the
14 application to this point of the principle of non-
15 discrimination in international commercial relations.

16 "4. Mutual respect of sovereignty and
17 territories.

18 "5. Mutual respect for the inherent char-
19 acteristics of each nation cooperating as good neighbors
20 and forming an East Asian nucleus contributing to world
21 peace.

22 "6. Withdrawal of Japanese armed forces
23 from Chinese territory as promptly as possible and
24 in accordance with an agreement to be concluded between
25 152. Exhibit 1092 (T. at 10,009).

Japan and China.

"7. No annexation.

"8. No indemnities.

"9. Amicable negotiation in regard to
153
Manchoukuo."

29. It can be seen that points 2, 3, 6 and 9 in the American list of items are those on which there was difference at this point. The ninth -- the recognition of Manchoukuo, as it stood in the Japanese proposal -- was never a point of contention and may be very shortly dismissed from further detailed consideration. "Recognition of Manchoukuo" had been a term of the original draft proposal presented by Secretary Hull to Ambassador NOMURA¹⁵⁴; the 31 May American counter-proposal included a clause for "amicable negotiation in regard to Manchoukuo"¹⁵⁵. The Secretary had told the Ambassador early in the conversations that the American "position right along was that that was a question between China and Japan. If China were voluntarily, through amicable negotiations, willing to agree to it we had nothing to say".¹⁵⁶ On 16 May, according to Mr. Hull's own memorandum of the

153. Id. (T. at 10,013).

154. Exhibit 1059 (T. at 9,851).

155. Exhibit 1078 (T. at 9,946).

156. Testimony of Ballentine (T. 10,999).

conversation,

1 "There was some discussion of the questions
2 of joint defense against communism and the recognition
3 of Manchuria. The Secretary indicated that if China
4 and Japan could agree on the other points listed in
5 the Japanese Annex and Explanation he did not believe
6 that difficulties which might arise over these two
7 points would be such as to prevent an agreement
8 between China and Japan"¹⁵⁷.
9

10 Number 3 of these items, relating to economic
11 cooperation in China, eventually merged into the
12 discussion of economic activities in the Pacific
13 area generally, and in the world. The remaining
14 items (Number 2, "joint defense against communism"
15 or "cooperative defense against injurious communistic
16 activities -- including the stationing of Japanese
17 troops in Chinese territory"; and number 6, "withdrawal
18 of Japanese troops from Chinese territory in accordance
19 with an agreement to be concluded between Japan and
20 China" or "as promptly as possible" and in accordance
21 with such an agreement) taken together constitute the
22 third of the basic points of contention between
23 Japan and America in the negotiations. A subsidiary
24 question, which came to assume more importance toward
25 157. Memorandum, Exhibit 2873 (T. at 25,714-15).

1 the end, was that of the tendering of good offices,
2 (also expressed as "acting as an introducer") by
3 the United States between Japan and China with the
4 object of ending the China Incident.

5 30. At the 16 May conversation already
6 referred to, Secretary Hull had said that he did
7 not consider the question of joint defence against
8 Communism to involve such difficulties as would prevent
9 an agreement between China and Japan ¹⁵⁸. At the
10 same time, he handed the Ambassador an oral statement
11 in which, after reciting receipt of the Japanese
12 counter-proposal and listing the nine points above
13 referred to, he said:

14 "While one or two of the points might
15 present difficulties, it is believed that, if China
16 and Japan could come to agreement on the basis of the
17 other points mentioned, the remaining points with some
18 modification need not present insuperable obstacles.

19 The principles embodied in the KONOYE
20 Statement, as defined in the "Annex and Explanation"
21 as relating to neighborly friendship, joint defense
22 against communism, and economic cooperation free from
23 economic monopoly or limitation of the interests of
24 other countries, could, with some modification, it is
25 158. Ibid.

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believed, be acceptable .

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159. Exhibit 2874 (T. at 25,718).

The question of stationing of Japanese troops in China received early and intensive consideration. Of its two aspects, it was the suggestion of leaving troops stationed in specified areas of China after conclusion of a general peace which underwent the most exhaustive exploration and offered the most difficulty in solution; the withdrawal from the territory of China after the peace of Japanese forces other than those to be stationed in the areas specified was discussed relatively little and eventually was solved by Japanese agreement to the American terms. Already on 20 May Secretary and Ambassador were discussing the troop-stationing question. Mr. Hull indicated that he did not care at that time to discuss the merits of the Japanese proposals to keep troops stationed in Chinese territory and to undertake joint defense against Communism; but he seemed to feel that they should be reworded -- that it should be "possible to cover these two points under some broader provision, such as a provision which would call for special measures of protection for Japanese nationals and property interests against lawlessness in areas where special measures for safeguarding the rights and interests of nationals of third powers were necessary." ¹⁶⁰ This, he indicated, (160. Memorandum, Ex. 2875, T. 25721.)

1 he considered as likely to be more acceptable to Chiang
2 Kai-shek.

3 On 31 May an American redraft of the proposal
4 was presented. It retained the statement that the
5 question of co-operative defence against Communism was
6 subject to further discussion, but contained the new
7 language that "withdrawal of Japanese military and
8 naval forces from China" should be carried out "as
9 promptly as possible."¹⁶¹ This addition of "naval"

10 forces was said, in an accompanying oral statement, to
11 be a rephrasing to avoid possible ambiguity.¹⁶²

12 Simultaneously Secretary Hull handed over another oral
13 statement, in which the undertaking was given that "the
14 Government of the United States will at some appropriate
15 stage prior to any definitive discussion talk over in
16 strict confidence with the Chinese Government the
17 general subject matter involved in the discussions,
18 especially as it relates to China."¹⁶³

19 31. It seems to be suggested by the prosecution¹⁶⁴
20 that the question of stationing troops in Inner Mongolia
21 and North China, after the general withdrawal of Japa-
22 nese forces, was newly raised by Japan in June. Such
23 was of course not the fact; not only the Japanese
24

25 (161. Ex. 1078, T. 9945.

162. Ex. 1079, T. 9951.

163. Ex. 1080, T. 9960.

164. Summation, SG-79, T. 39615.)

position that it must have the right of stationing
1 troops, but these specific named areas, had been ex-
2 plicit in the conversations from the beginning, and the
3 United States authorities had long since heard and,
4 apparently, understood the Japanese requirement and its
5 reason. Thus, we have seen, at the conversation of 20
6 May Secretary Hull had adverted to these questions;
7
8 at a further conversation of the 28th Ambassador NOMURA
9 specifically stated, in answer to Mr. Hull's questioning,
10 that the general "evacuation would not include troops
11 retained in China under the provision of co-operative
12 defense against Communistic activities. He contemplated
13 an arrangement being negotiated with China similar to
14 the Boxer Protocol under which Japanese troops would
15 be stationed for an indefinite period in North China
16 and Inner Mongolia. The Ambassador said he could not
17 indicate approximately how many troops it was proposed
18 to station in China under such an arrangement or define
19 precisely the areas in which the arrangement would be
20 operative."¹⁶⁶

21
22 The witness Ballantine stated that the first
23 official intimation which the Department of State had of
24 the extent of the Japanese claims to the right to station
25 troops in China was given in conversation with Colonel

(165. Loc. cit. supra n160.

166. Memorandum, Ex. 1077, T. 9936.)

167
 IWAKURO, a military adviser to Ambassador NOMURA, but
 1 there seems to be no clear evidence of the date of those
 2 conversations -- they were apparently soon after 12 May.
 3 At any rate, the colonel did make it clear that Japa-
 4 nese troops were to remain in North China and Inner
 5 Mongolia to defend against a Communist menace, as well
 6 as for the additional purpose of maintaining order in
 7 areas which were adjacent to Japan geographically. 168
 8 The Communist activities, the witness admitted, did
 9 exist, but he "would not want to pass on" whether the
 10 Central Government of China had been unable to maintain
 11 order. 169 Apparently the State Department did not ob-
 12 ject to the basic idea of Japan's maintenance of troops
 13 in China to protect whatever legitimate interests she
 14 might have there -- there was some question what
 15 interests could be called "legitimate," 170 and the
 16 United States was indeed desirous of doing away, gradu-
 17 ally, with the rights granted to foreign powers by the
 18 Boxer Protocol and other treaties to maintain troops in
 19 China; 171 but in general there was no thought on the
 20 American side of insisting on immediate, unconditional
 21 Japanese withdrawal; 172 Japan was to be allowed a

- 24 (167. T. 10909.
 168. T. 10909-10.
 25 169. Ibid.
 170. T. 10910.
 171. T. 10907.
 172. T. 10913.)

reasonable time under existing conditions to effect
 1 evacuation of her large forces in China.¹⁷³ The
 2 difficulty in the troop-stationing question was, as
 3 usual, in the details: The United States was disturbed
 4 over Japanese vagueness concerning the time-limit for
 5 the stationing of the troops after the peace, the areas
 6 in which they were to be stationed, and the numbers of
 7 troops involved. But, "subject to further discussions"
 8 (as the American counter-proposal of 31 May had it) of
 9 these details, America had no objection to the Japanese
 10 retention of troops in China.
 11

12 32. From the Japanese position on this ques-
 13 tion as expressed in the latter half of May, said
 14 Ballantine,¹⁷⁴ they never receded. We shall, neverthe-
 15 less, see as we trace the negotiations that in the three
 16 particulars of length of time of stationing troops,
 17 areas of stationing, and numbers of troops, Japan did as
 18 time passed make her proposals more definite and, for the
 19 most part, more moderate.
 20

21 An important meeting among members of the Japa-
 22 nese Embassy staff and representatives of the State
 23 Department took place on 4 June.¹⁷⁵ It was made clear,
 24 in the course of discussion of revised clauses which the

25 (173. T. 10911.
 174. T. 10909.
 175. Memorandum, Ex. 1083, T. 9964-78.)

1 Japanese had proposed, that notwithstanding Japan's
2 policy had been not to regard the Chungking Government
3 as more than a regional regime, she did intend in pur-
4 suance of the proposed understanding to treat with
5 Chungking for settlement of the China Incident, and that
6 Japan expected to leave it to the Chinese people to
7 decide whether the Nanking or the Chungking regime or a
8 coalition of the two should be the eventual government
9 of China.¹⁷⁶ It was made clear also that the American
10 proposal of providing by the agreement for withdrawal of
11 naval as well as military forces was accepted, with only
12 a phraseology to be settled.¹⁷⁷ Nevertheless, two days
13 later an oral statement presented by Secretary Hull
14 contended that the proposed revisions of 4 June, with
15 others unspecified, had "gradually narrowed down" the
16 Japanese proposal of 12 May.¹⁷⁸ So far as concerns the
17 China question, the "narrowing" process is not evident,
18 nor is it apparent how the changes in wording in the two
19 drafts would, especially in view of the explanations
20 given at the 4 June meeting, amount to avoiding, as the
21 oral statement charged, the giving of a "clear indication
22 of an intention to place Japan's relations with China on
23 a basis which in the opinion of the Government of the
24

25 (176. Id., T. 9969.

177. Id., T. 9972.

178. Ex. 1085, T. 9982.)

United States would contribute to a lasting peace and
 1 thus to future stability in the Far East." ¹⁷⁹ This

2 language seems again to represent the American concern
 3 with the general in preference to the particular.

4 Some ten days later -- on 15 June -- the Japa-
 5 nese revised counter-proposal was presented. ¹⁸⁰ The

6 Japanese position on the China question as stated in
 7 this draft need not be set out here, differing as it
 8 does only verbally from that of the 12 May proposal. On

9 21 June, however, the United States also produced a
 10 revised proposal ¹⁸¹ -- that destined to be its last

11 in this series of discussions -- together with an oral
 12 statement. ¹⁸² The section of the proposal relating to

13 the China question is with one exception in the identi-
 14 cal words of the preceding United States draft, that of
 15 31 May. The exception is an addition to the note on

16 further discussion of the problem of troop-stationing,
 17 suggesting that questions of verbal change in the sec-

18 tion can advantageously be postponed to solution of the
 19 details of the problem. The oral statement is a peculiar

20 document. It now expressed for the first time "mis-

21 giving" over the desire of Japan to retain the right of
 22 stationing its troops in Inner Mongolia and North China

23 "as a measure of co-operation with China in resisting
 24

25 (179. Id., T. 9983.

180. Ex. 1087, T. 9988-97.

181. Ex. 1092, T. 10005.

182. Ex. 1091, T. 10001.

1 Communistic activities;" while the American Government
2 had "given careful thought" to the question, and did not
3 "desire to enter into the merits" of it, it felt that
4 the liberal policies to which it was committed would not
5 permit it "to associate itself with any course" incon-
6 sistent therewith, which this proposal, as affecting
7 "the sovereign rights of a third country," apparently
8 was considered to do.^{183.} One might suppose -- were it
9 not for the evidence above cited -- that the United
10 States now for the first time heard the suggestion of
11 retention of Japanese troops in North China and Mongolia,
12 and was shocked by it. But having in mind that evidence,
13 from which it appears that this point had been explicitly
14 mentioned, without apparent objection by the American
15 representatives but rather with discussion of the
16 phraseology most suitable for expressing it, as early
17 certainly as 20 May and perhaps much earlier, it is
18 difficult to understand the American position. The
19 position is, in fact, self-contradictory; for despite
20 this broad hint that the United States would reject any
21 request by Japan that she be allowed to retain troops in
22 China, her draft proposal of the same date mentions the
23 matter as "subject to further discussion of the question
24 of Communistic activities, including the stationing of
25 (183. Id., T. 10002.)

1 Japanese troops in Chinese territory."

2 33. There seems to have been no new development
3 in this matter until, on 6 August, Ambassador NOMURA
4 handed to Secretary Hull a further Japanese effort, in
5 the form of supplementary proposals to be incorporated,
6 if agreed upon, into the general agreement. They dealt
7 largely with the Indo-China question, newly arisen
8 since the last proposals had been discussed, but con-
9 tained the provision that "the Government of the United
10 States will use its good offices for the initiation of
11 direct negotiations between the Japanese Government and
12 the Chiang Kai-shek regime for the purpose of a speedy
13 settlement of the China Incident." ¹⁸⁴ On 28 August
14 Admiral NOMURA, as he reported to Foreign Minister
15 TOYODA, had a talk with Secretary Hull, at which time
16 the Secretary further qualified his original statement
17 that he had no interest in influencing the terms of
18 Sino-Japanese settlement -- provided they were agreeable
19 to the parties -- by pointing out that the United States
20 could not simply, as requested by Japan, use its good
21 offices to restore peace; it must be thoroughly familiar
22 with the proposed Sino-Japanese negotiations in order to
23 be able to persuade China to agreement. ¹⁸⁵

24 The Japanese proposal of 6 September ¹⁸⁶ is

(184. Ex. 2885, T. 25763. 186. Ex. 1245-D, T. 10778.
185. Ex. 2893, T. 25795.

1 alleged by the prosecution (adopting the conclusion of
2 Ballantine) to have been "much narrower than the
3 assurances" given on 28 August.¹⁸⁷ We need not debate
4 this point with Mr. Ballantine, for it chances that the
5 Ambassador of the United States in Tokyo, Mr. Grew, has
6 made for us an analysis of the proposal. The proposal
7 was handed to the Ambassador by Foreign Minister
8 TOYODA on the 4th,¹⁸⁸ and after study of it he reported
9 his views to the State Department.¹⁸⁹ His conclusion
10 was that in respect to the China question "the commit-
11 ments contained in the latest Japanese proposal, if
12 implemented, would fulfill this requirement," of "the
13 cessation on the part of Japan of its progressive acts
14 of aggression."¹⁹⁰

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25 (187. T. 10778.
188. Ex. 2895, T. 25801-4.
189. Ex. 2896, T. 25805-8.
190. Id., T. 25807.)

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1 It should be supererogatory to point out
2 that the hypothesis upon which negotiations were con-
3 ducted at all was that of "implementation" of such
4 commitments as might eventually be agreed upon, but
5 in view of certain peculiar developments later in the
6 negotiations this may be mentioned. It might be
7 remarked also, in passing, that Ambassador Grew showed
8 himself quicker than the authorities in Washington
9 to realize that in entering into a settlement with
10 Japan the United States "would always retain in its
11 hands the leverage which would contribute to Japanese
12 implementation of its commitments. If an adjustment
13 of relations is to be achieved some risk must be run,
14 but the risk taken in the pursuance on our part of a
15 course which would not only provide inducements to
16 the Japanese to honor their undertakings but would
17 also leave to the United States Government a certain
18 leverage of compulsion would appear to be relatively
19 less serious than the risk of armed conflict entailed
20 in the progressive application of economic sanctions
21 which would result from a refusal to accept these
22 proposals."¹⁹¹
23

24 This has a special interest in view of the
25 increasing tendency in Washington as the negotiations
progressed to consider that any commitments which

191. Id. (tr. at 25,807-8)

1 Japan might make would have no value in any event --
2 but that is to anticipate.

3 The stiffening in the American attitude
4 which had been growing since June was remarked upon
5 by Ambassador NOMURA in reporting to Foreign Minister
6 TOYODA the American reception of the proposal of 6
7 September. The Americans had recently, he reported
8 on 12 September, shown a tendency to discuss a two-
9 year limit for the evacuation of all troops from China.¹⁹²
10 Meanwhile, for use in explanation of the current
11 proposals. Foreign Minister TOYODA sent instructions
12 to the Embassy, handing a copy of them to Ambassador
13 Grew on 13 September.¹⁹³ The further clarification
14 of the China problem therein contained was this:

15 "For the purpose of preventing Communistic
16 and other subversive activities threatening the safe-
17 ty of both Japan and China and also of maintaining
18 the peace and order in China, Japan and China will
19 cooperate in the form of common defense. The execu-
20 tion of the common defense by Japan and China will
21 contain the stationing of Japanese troops for a cer-
22 tain period in accordance with the agreements between
23 both countries. The Japanese troops which have been
24 sent to China with the object of executing the China
25

192. Ex. 1,139 (tr. at 10,225)

193. Ex. 2,899 (tr. at 25,816-19)

affairs will be withdrawn when the said affairs have
194
been settled."

Some doubt having apparently arisen in the minds of the American authorities concerning Japan's desire for American good offices in assisting the settlement of the China Incident, the Foreign Minister gave assurance to Mr. Grew, on 13 September and again on the 22d, that Japan continued to wish for the rendition of such good offices. In connection with that matter, on the latter occasion he handed to the Ambassador a copy of the basic terms for Sino-Japanese

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peace. Still again, on the 23d, Admiral TOYODA transmitted to the American Embassy in Tokyo a full explanation of the reasons which constrained the Japanese authorities to the view that retention of troops in some areas of China after the conclusion of peace was a necessity, ¹⁹⁶ an explanation of conditions in China (as apposite today as in 1941) expressed with a force which could hardly be gainsaid the importance to Japan of a stable China.

34. On 25 September another Japanese proposal
197 was presented, one which had an odd reception.
We have already seen that Secretary of State Hull on 2
October handed to the Ambassador of Japan an elaborate

194. Id. (tr. at 25,817-18)

195. Ex. 2,901 (tr. 25,823-26)

196. Ex. 2,902 (tr. 25,827-30)

197. Ex. 1,245-E (tr. 10,764)

1 oral statement reviewing the course of the negotiations
2 for some time previous. Yet this note makes no men-
3 tion whatever of the proposal of 25 September, one
4 week earlier, confining itself to an analysis of that
5 of 6 September. Moreover, it indicates that Secretary
6 Hull had now come full circle around from his original
7 position that the matter of stationing Japanese troops
8 in China was "subject to further discussion," that as
9 Ballantine says, they "were prepared to explore the
10 subject of terms of withdrawal."¹⁹⁸ For he now regards
11 the matter thus:

12 "This Government has noted the views of the
13 Japanese Government in support of its desire to sta-
14 tion troops for an indeterminate period in certain
15 areas of China. Entirely apart from the question of
16 the reasons for such a proposal, the inclusion of such
17 a provision in the proposed terms of a peaceful settle-
18 ment between Japan and China at a time when Japan is
19 in military occupation of large areas in China is
20 open to certain objections. For example, when a
21 country in military occupation of territory of another
22 country proposes to the second country the continued
23 stationing of troops of the first country in certain
24
25 198. Tr. 10,913.

1 areas as a condition for a peaceful settlement and
2 thus for the withdrawal of the occupationary forces
3 from other areas, such procedure would seem to be out
4 of keeping with the progressive and enlightened
5 courses and principles which were discussed in the
6 informal conversations and thus would not, in the
7 opinion of this Government, make for peace or offer
8 prospects of stability."¹⁹⁹

9 Then did the continuance of troops in areas
10 of China as part of the settlement become inconsistent
11 with the principles discussed? Not by the American
12 proposal of 21 June, when it was "subject to dis-
13 cussion"; and this remained, according to Ballantine,
14 "up to the time of our November 26 proposal, our last
15 complete proposal."²⁰⁰ If the considered American
16 view actually was, as indicated by this oral state-
17 ment, that Japanese troop-stationing in China was
18 unacceptable, why were negotiations continued?

19 35. At any rate, it was evident by this
20 time that the troop-stationing question was by all
21 odds the greatest obstacle to agreement -- Admiral
22 NOMURA, in fact, had a report on 3 October from which
23 it might be inferred that both President Roosevelt
24

25 199. Ex. 1245-G (tr. at 10,803-4)
200. Tr. 10,884.

1 and Secretary Hull regarded it as the only remaining
 2 ²⁰¹ issue. The available evidence makes it question-
 3 able whether thenceforward the State Department did
 4 really negotiate on the question at all; further
 5 Japanese efforts thereafter were given scant considera-
 6 tion, and it is hardly to be wondered at that the
 7 authorities in Tokyo came gradually to feel a lack
 8 of sincerity in the American attitude. ²⁰²

9 After receipt of the oral statement of 2
 10 October "the conspirators presented new formulas for
 11 limited special problems," we are told on the authority
 12 of Ballantine. ²⁰³ No glimmer of a suggestion concern-
 13 ing these "new formulas" is vouchsafed by the evidence.
 14 Or perhaps one is. On 13 October Minister WAKASUGI
 15 called on Under-Secretary of State Welles to discuss
 16 the China question and to say that Japan was willing
 17 to evacuate all of its troops from China -- all of them.
 18 he said twice. ²⁰⁴ If Mr. Hull had the idea that Japan
 19 could, if sufficiently pressed, be brought to withdraw
 20 all her troops from China immediately, Mr. Welles was
 21 more practical; when the Minister said that of course
 22 it was impossible after four years of warfare to with-
 23 draw the entire military force in twenty-four hours,
 24 his understanding comment was that "of course nobody
 25

201. Ex. 2906 (tr. at 25,845)

202. Memorandum, Ex. 2927 (tr. 25,981)

203. Summation, SG-103 (tr. 39,643); cf. test. of Ball-
 antine, tr. 10,809

204. Memorandum, Ex. 2911 (tr. 25,856)

1 expected miracles in this modern age." ²⁰⁵ At any
 2 rate, says witness Ballantine, in these mysterious "new
 3 formulas" there was discernable no evidence that Japan
 4 "was moving even one step toward" peace or "receding
 5 even one step from" her sinister objectives. ²⁰⁶ No
 6 "formula," of course, could furnish such evidence --
 7 though he seems not to consider what might have been
 8 the effect of actions implementing any formulas agreed
 9 upon.

10 36. On 16 October 1941 the KONOYE Cabinet
 11 fell. The direct and proximate cause of this change
 12 of government was the question of the stationing of
 13 troops in China in relation to the Japanese-American
 14 negotiations, as is explained by Prince KONOYE himself
 15 in his memoirs. ²⁰⁷ In a last effort to save the ne-
 16 gotiations -- and thus the Cabinet -- Foreign Minister
 17 TOYODA had prepared and submitted to Premier KONOYE
 18 his estimate of what would be necessary to secure
 19 American understanding on the troop-stationing problem. ²⁰⁸
 20 It proved impossible in the end to secure internal
 21 agreement to the making of such concessions as he
 22 thought essential, and the cabinet resignation came
 23 about in consequence.
 24

25 205. Id. (tr. at 25,857).

206. Tr. 10,810

207. Ex. 2914 (tr. 25,868-73); see also Ex. 2919 (tr.
 25,939-40).

208. Ex. 2916 (tr. 25,912)

1 Upon the formation of the TOJO Cabinet the study of
 2 the entire question of the Japanese-American negotia-
 3 tions was made the first order of business. Quite
 4 naturally, it being understood that agreement in
 5 principle had been reached on the other main points,
 6 these discussions centered about the problem of the
 7 stationing of troops in and their withdrawal from
 8 China.

9 The first fruit of this process of reconsidera-
 10 tion was a new Japanese proposal, known as "Proposal
 11 A," which was presented to Secretary Hull on 7 Novem-
 12 ber²⁰⁹ and to President Roosevelt on the 10th.²¹⁰

13 This proposal A has been the subject of wide difference
 14 of opinion. By it Japan had, as the prosecution
 15 asseverate, "not moved in the slightest from her
 16 original position."²¹¹ The defendants, on the other
 17 hand, all felt that it represented substantial and
 18 important concessions from the earlier Japanese stand.²¹²

19 Ballantine failed altogether to mention it in his
 20 testimony. For attaching no importance to Proposal A
 21 he has two reasons:²¹³ that it raised a new question,
 22 that of Hainan Island; and that it was known from the
 23 contents of Tokyo's intercepted telegrams not to have
 24

25 209. Ex. 1246 (tr. 10,918).

210. Memorandum, Ex. 2927 (tr. 25,974).

211. Summation, SG-120 (tr. 39,660)

212. Testimony of Yamamoto (tr. 25,938-49)

213. Tr. 10,916

1 been made in good faith. This latter point we shall
2 come to presently; but now we must examine the docu-
3 ment carefully to see whether it represents a con-
4 cession on the question of troop-stationing.

5 37. Proposal A was, as has been mentioned,
6 not a completely redrafted proposal; it consisted of
7 three clauses to be substituted in or added to the 25
8 September draft, together with various explanations
9 which the Ambassador was to make in one form or another
10 to the United States authorities. The newly-rewritten
11 clauses are quite brief, and it will be convenient to
12 see them in their entirety before attempting to dis-
13 sect the proposal. It is as follows:

14 "Disposition of Japanese Forces

15 "(A) Stationing of Japanese forces in China
16 and the withdrawal thereof:

17 "With regard to the Japanese forces that
18 have been dispatched to China in connection with the
19 China Affair, those forces in specified areas in North
20 China and Mengchiang (Inner Mongolia) as well as in
21 Hainan-tao (Hainan Island) will remain to be stationed
22 for a certain required duration after the restoration
23 of peaceful relations between Japan and China. All
24 the rest of such forces will commence withdrawal as
25 soon as general peace is restored between Japan and

1 China, and the withdrawal will proceed according to
2 separate arrangements between Japan and China and
3 will be completed within two years with the firm
4 establishment of peace and order.

5 "(B)" Stationing of Japanese forces in French
6 Indo-China and the withdrawal thereof:

7 "The Japanese Government undertakes to guar-
8 antee the territorial sovereignty of French Indo-
9 China. The Japanese forces at present stationed there
10 will be withdrawn as soon as the China Affair is
11 settled or an equitable peace is established in East
12 Asia.

13 "Principle of Non-Discrimination"

14 "The Japanese Government recognizes the prin-
15 ciple of non-discrimination in international commer-
16 cial relations to be applied to all the Pacific areas,
17 inclusive of China, on the understanding that the
18 principle in question is to be applied uniformly to
19 the rest of the entire world as well."
20

21 The prosecution have been pleased to charac-
22 terize Proposal A as "exceedingly and purposely vague
23 on the question of evacuation of troops from China
24 and French Indo-China." ²¹⁴ On the contrary, it is

25 214. Summation, SG-117 (tr. 39,657)

1 submitted, this document and the accompanying ex-
2 planations (which together constitute the proposal)
3 demonstrably do for the first time in the course of
4 the negotiations limit Japan's demands in the three
5 particulars which made up "the question of evacuation
6 of troops from China": the area, the duration, and the
7 number of troops.

8 38. First, as to the area. By Proposal A
9 Japan was prepared for the first time to state definite-
10 ly the areas in which would be stationed the troops to
11 remain in China after the conclusion of a Sino-Japan-
12 ese peace. Certainly, "in specified areas in North
13 China and Mengchiang (Inner Mongolia) as well as in
14 Paiman-tao (Hainan Island)" is still general enough;
15 and until the areas had actually been "specified" the
16 United States might understandably remain unenthusi-
17 astic. But the remarkable thing is that, although
18 this specification must certainly have been demanded
19 if any negotiation was to be conducted, no such demand
20 was made. There is, I repeat it, no indication that
21 such a demand was ever made -- or, therefore, that
22 if made it would not have been complied with. On the
23 other hand, here for the first time during the nego-
24 tiations is stated specifically in a formal proposal
25 the condition of retention of troops in Hainan; which

1 Ballantine says "was entirely a new question, so
2 instead of bringing us nearer it injected in a new
3 question which left us just where we were." ^{215.} "Even
4 had the Hainan question been as entirely new on 7
5 November as Mr. Ballantine puts it, no doubt it would
6 be correct to say just as he says, that it left the
7 matter where it was -- certainly it does not in any
8 way represent retrogression that Japan has for the
9 first time named all the areas where she wishes her
10 troops to be stationed. Interestingly, however, this
11 is not the first mention of Hainan which had come to
12 the attention of the American authorities in connec-
13 tion with the troop-stationing problem. The question
14 was actually in November 1941 as old in the negotia-
15 tions as Ballantine brands it new. The original
16 Japanese draft proposal of 12 May had referred, in
17 its Section III, to the United States' acknowledging
18 the elaboration of the KONOYE Principles as set forth
19 in the Treaty of Basic Relations with Nanking China of
20 30 November 1940. ^{216.} That Treaty contained this
21 language:

22 "The Government of the Republic of China
23 has agreed to cooperate intimately between the two
24

25 215. Tr. 10,916
216. Ex. 464 (tr. 5318).

1 countries in planning development and production of
 2 special resources, especially strategical resources
 3 necessary for national defense in Amoy, Hainan Island
 4 and the adjoining islands thereof.²¹⁷"

5 These terms were communicated to the United
 6 States Government at some time during the course of
 7 the negotiations;²¹⁸ Ambassador NOMURA in fact
 8 intimates, in his report of 18 April to Premier KONOYE,
 9 that the Hainan question might even have been dis-
 10 cussed in the course of the preliminary conversations
 11 which resulted in the original private draft proposal
 12 of 9 April. Speaking of the general subject of "joint
 13 defense against Communism" and "withdrawal of troops,"
 14 he mentions that in the draft "no stipulation is in-
 15 serted -- though it had at first been intended to
 16 insert one -- concerning our special position in North
 17 China and Mongolia, in view of the delicate question
 18 of Hainan Island." The withdrawal of troops, he says,
 19 will be so carried out as not to conflict with the
 20 Treaty of Basic Relations.²¹⁹ (The Department of
 21 State, incidentally, was informed from the spring of
 22 1941, through interception, of the contents of the
 23 Embassy's messages to and from the Foreign Ministry).²²⁰
 24

25 217. Ex. 465 (tr. at 5327).

218. Ex. 3456 (tr. 33,192); test. of def. MUTO (tr. 33,194)

219. Ex. 3871 (tr. 24,688-9)

220. Testimony of Ballantine (tr. 10,992).

The position that the question of Hainan came as a surprise to the Department of State in November 1941 seems therefore difficult to maintain. The surprise should have been that Amoy, mentioned with Hainan in the Treaty, above quoted, the terms of which were known to them, had been dropped. Quite aside from that, there is no apparent reason why if new it should have been so alarming to Mr. Ballantine; when the United States' position was being repeatedly advanced by the putting forward of new requirements--most of which were eventually accepted by the Japanese--it is hard to see why the raising of a single new question from the Japanese side must necessarily have had such a final chilling effect on the negotiations. We are, indeed, justified in doubting Mr. Ballantine's estimate of the importance which was contemporaneously attached to this point; for it is most noteworthy that no suggestion has been made from any source that the Department of State either put any questions, or so much as commented upon the Hainan matter, whether at the time that Proposal "A" was tendered or at any time thereafter. This conduct is consistent with the State Department's having already had knowledge of the Hainan point, and attaching no special importance to it; it is inconsistent with their having first

1 heard of it, with surprise and disappointment, on
2 7 November. It is not consistent with the role of
3 disappointed surprise that no State Department
4 official ever said to the Japanese Ambassador, "Ah,
5 there you've raised a difficult point," ever suggested
6 to the Ambassador that importance of the Hainan
7 question which has not been explained to the Tribunal
8 by any witness or any account of the Department of
9 State.

10 39. Next, as to time. For the first time
11 in the course of the negotiations, by Proposal "A"
12 Japan placed a definite limit on the time for with-
13 drawal from China of troops generally after the
14 conclusion of peace. As the prosecution put it,
15 "Japan merely proposed to withdraw her troops,
16 except in certain areas, only within two years after
17 peace was established. Certainly, this cannot be
18 deemed a concession."²²¹ What this minimizing
19 argument overlooks is that it was "only within two
20 years" that the United States had demanded withdrawal,
21 when it had first injected the question of this time-
22 limit into the negotiations some months before,²²²
23 hence that this clause of Proposal "A" represented
24

25 221. Summation, Section G-120 (Tr. 39661).

222. Loc. cit. supra n192.

1 complete acceptance of another American position,
2 and as such must certainly "be deemed a concession."

3 The more important point is that nothing is
4 stated on the face of Proposal "A" concerning other
5 details of the withdrawal and stationing of troops--
6 to-wit, the duration for which the remaining troops
7 would be stationed and the number of the troops to
8 remain behind. These points, however, were compre-
9 hended within Ambassador NOMURA's instructions for
10 explanation to the United States, and they were
11 explained by him, upon inquiry by the Secretary of
12 State, to the extent of the Secretary's inquiry. It
13 will have been noted that the vagueness of the dura-
14 tion of the troop-stationing had been one of the
15 points, perhaps the point, most alarming to the
16 Secretary; in his oral statement of 2 October, for
17 example, he had referred with disapproval to the
18 Japanese Government's "desire to station troops for
19 an indeterminate period in certain areas of China."²²³
20 Appreciating this point, the new Japanese cabinet had
21 concentrated a large part of the effort which resulted
22 in the drawing up of Proposal "A" upon the attempt
23 to reach an agreement on the limitation of time.²²⁴
24

25 223. Ex. 1245-G, Tr. 10803-4.

224. Testimony of YAMAMOTO (Tr. 25938-41) and
TOGO (Tr. 35685-87).

1 As the evidence has shown,²²⁵ it had not been possible
2 to reach any agreement, either on the 5-year term
3 proposed in his time by Foreign Minister TOYODA,²²⁶
4 or on any other definite period. For the first time,
5 however, there was acceptance on the Japanese side
6 of the principle that the stationing of troops should
7 be not indefinite, but for a limited period²²⁷ --
8 theretofore not even the principle had been unquali-
9 fiedly agreed to -- and an approximate term was set
10 as a working basis for negotiations on that new
11 postulate. The fact of this major concession's
12 having been now made for the first time is so in-
13 disputable that Ballantine himself admits that it is
14 "possibly so".²²⁸ It is noteworthy that only after
15 strong insistence had the Government been able to
16 extort from the military high command this concession,
17 refusal to give which had resulted in the downfall of
18 the KONOYE Cabinet,²²⁹ and its significance was not
19 doubtful at the time. It was pointed out to Amba-
20 sador NOMURA, in the telegram from Foreign Minister
21 TOGO transmitting Proposal "A" to him, that "in view
22 of the strong American opposition to the stationing
23

24 225. Ibid.

25 226. Ex. 2916, Tr. 25916.

227. Loc. cit. supra N224.

228. Tr. 10928.

229. Ex. 2914, Tr. 25868.

1 for an indefinite period, it is proposed to dismiss
 2 her suspicion by defining the area and duration of
 3 the stationing."²³⁰ On the other hand, it was recog-
 4 nized that public proclamation of the length of time
 5 for which the troops would remain in the specified
 6 areas of China might well defeat the purpose of
 7 their being stationed there, and the Ambassador was
 8 accordingly directed "to abide, at this moment, by
 9 the abstract term 'necessary duration,' and to make
 10 efforts to impress the United States with the fact
 11 that the troops are not to be stationed either per-
 12 manently or for an indefinite period," only upon
 13 inquiry saying that the "approximate goal" for with-
 14 drawal was to be 25 years.²³¹

15 This was impressed by Ambassador NOMURA
 16 upon Mr. Hull -- "I pointed out . . . that it was no
 17 longer an indefinite stationing that we proposed"²³² --
 18 and the Secretary expressed his "appreciation of the
 19 clarification." He could scarcely have done less, in
 20 view of the extreme significance of the point, which
 21 had been the crux of six months of negotiation. It
 22 may however be objected that the detail of this
 23

24 230. Ex. 2925, Tr. 25969.

25 231. Id. (Tr. 25970).

232. Ex. 2929, Tr. 25994, as corrected.

1 acceptance of the principle of limitation upon the
2 stationing of troops, the approximate goal, was
3 expressed in neither the written clauses of Proposal
4 "A" nor the Ambassador's explanation, was only so to
5 say held in petto by Ambassador NOMURA, not confided
6 to the representatives of the United States, and as
7 a matter of which they knew nothing represented no
8 concession of anything. This argument would be per-
9 fectly valid were it not for one thing -- that
10 (subject to what is to be said on the matter
11 presently)²³³ the United States authorities were
12 reading the Ambassador's correspondence. They there-
13 fore knew that he was, by the instructions sent him
14 concerning Proposal "A," armed with something more
15 concrete than had ever before been mentioned, upon
16 the basis of which to "impress the United States with
17 the fact" that the troop-stationing was not to be
18 indefinite: for with Proposal "A" he was given the
19 note, "in case the United States inquires into the
20 length of the necessary duration, reply should be
21 made to the effect that the approximate goal is
22 25 years."²³⁴ Now, twenty-five years may have been
23 a reasonable period in the circumstances, or it may

25 233. *Infra*, Section 41, et seq.

234. *Id.* (Tr. 25968).

1 have been unreasonable; but that is not the question
2 here. The curious fact is that the American author-
3 ities, who had such strong opposition to indefinite
4 stationing and were apparently so insistent on a
5 definite limit being announced, had not sufficient
6 interest in the matter to inquire into the point --
7 and this though they knew that the Ambassador's
8 instructions would require him to say in answer to
9 inquiry that which would represent abandonment of the
10 claim to indefinite stationing, acceptance of the
11 principle of limitation in time. They did not ask;
12 wherefore the Ambassador never reached the point of
13 mentioning the 25-year "approximate goal." We can
14 only conclude, it is submitted, that they did not
15 find the period objectionable; had they done so, they
16 had only to ask, have it out in the open, and state
17 their objections to it -- perhaps it would have been
18 subject to negotiation. As it was, they did not
19 negotiate; and in point of fact, the witness Ballantine,
20 pressed to say whether the 25-year period was in itself
21 considered unreasonable by the State Department,
22 tacitly confessed that it was not by seeking refuge
23 in the evasion that "we didn't consider each of these
24 small points individually. We considered the
25

proposition as a whole."²³⁵ Nor does Secretary
 1 Hull's assurance to the Ambassador on the 12th --
 2 with knowledge, it must be remembered, of the
 3 substance of Ambassador NOMURA's instructions -- that
 4 he appreciated the "clarification that no indefinite
 5 stationing of troops" was intended,²³⁶ sound like
 6 objection to the 25-year term. There is in fact
 7 evidence from which we may feel quite certain on this
 8 point. Considerably later -- by 23 November --
 9 Ambassador NOMURA received one of those "reliable
 10 reports" of his which usually meant a Cabinet
 11 minister²³⁷ to the effect that: "Hull is of the
 12 opinion that the stationing of troops for such
 13 period as may be necessary is in effect indefinite
 14 stationing; that there is no objection if the dura-
 15 tion is set for four or five years, providing that
 16 the further decision be made in accordance with the
 17 situation at the end of that period; but that the
 18 indefinite stationing is contradictory to the prin-
 19 ciples of non-annexation and respect for sovereignty.²³⁸
 20 Mr. Hull's idea was five years, Admiral NOMURA's was
 21 (as Mr. Hull knew) twenty-five; the condition which
 22
 23

24 235. Tr. 10927.

25 236. Ex. 2929, Tr. 25994, as corrected.

237. Ex. 2933, Tr. 26004.

238. Ex. 2946, Tr. 26049.

1 makes "negotiations."

2 40. And, finally, some days after the
3 presentation of Proposal "A," the question of the
4 number of troops to be stationed in China after the
5 peace also was clarified by the Japanese. At the time
6 that the proposal was handed to the Secretary of
7 State, he had asked "in what ratio withdrawal and
8 stationing would be." The Ambassador replied that
9 "the greater portion of the troops would be withdrawn."²³⁹
10 Seemingly the State Department had somewhat more
11 interest in this point than in those of the duration
12 and the area of the stationing, for it was reverted
13 to later. At a conversation with Mr. Hull of
14 18 November, Admiral NOMURA, having apparently
15 obtained more definite instructions, in response to
16 a question "how many soldiers the Japanese wanted to
17 retain in China," answered, "that possibly 90 per cent
18 would be withdrawn."²⁴⁰
19

20 41. Mr. Ballantine's explanation for this
21 almost total failure of the State Department to mani-
22 fest interest in Proposal "A" is founded primarily on
23 his conviction that, as shown by interception of Tokyo-
24 Washington messages, "the representations being made

25 239. Ex. 2928, Tr. 25989.

240. Memorandum, Ex. 2940, Tr. 26027.

1 to us . . . were not being made in good faith.²⁴¹

2 These intercepted telegrams, which endowed the
3 Department of State with the attributes proper to a
4 clairvoyant, seem to have played such a decisive
5 role in forming the attitude of the Department that
6 they must be subjected to a brief scrutiny.

7 THE PRESIDENT: We will adjourn until half-
8 past nine Monday next.

9 (Whereupon, at 1600, an adjournment
10 was taken until Monday, 15 March 1948, at
11 0930.)

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